(33,725)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928

No. 416

THE UNITED STATES OF AMERICA EX REL. NIELS PETER CLAUSSEN, PETITIONER,

vs.

HON. BENJAMIN M. DAY, COMMISSIONER OF IMMIGRATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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[fol. 1]

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Writ of Habeas Corpus

The President of the United States of America, to Hon. Benjamin M. Day, Commissioner of Immigration, Ellis Island, Greeting:

We command you, that all and singular business and excuses being laid aside, you and each of you appear and attend before the Judge of the District Court of the United States of America for the Southern District of New York, at a Stated Term of said Court, to be held in the United States Court Room, No. 235, in the United States Court, Southern District of New York, on the 4 day of May, 1928, at 10:30 o'clock in the forenoon of that day and that you have the body of N. P. Claussen, mentioned in the petition, by you imprisoned and detained as it is said, together with the time and cause of such imprisonment and detention by whatsoever name the said person is called or charged, to do and receive what shall then and there be considered concerning said petitioner and have you there this writ.

Witness, Hon. John C. Knox, Judge of the District Court of the United States, for the Southern District of New York, at the City of New York, on the 1st day of May, in the year of our Lord one thousand nine hundred and twenty-eight.

Alex. Gilchrist, Jr., Clerk.

May 1st, 1928.

This writ is hereby allowed.

T. D. Thatcher, D. J.

Silas B. Axtell, Attorney for Petitioner, 11 Moore Street, New York City.

[fol. 2] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, ex rel. NIELS PETER CLAUSSEN,

against

HON. BENJAMIN M. DAY, Commissioner of Immigration

PETITION FOR WRIT OF HABEAS CORPUS

To the Honorable Judges of the United States District Court for the Southern District of New York:

The petition of Niels Peter Claussen, respectfully shows:

That the petitioner is imprisoned and restrained of liberty at Ellis Island, illegally and without authority of law. Petitioner is held in custody by the respondent and his subordinate officials under the color and by virtue of certain so-called rules and regulations issued by the United States Secretary of Labor, to regulate the immigration of foreign immigrants and deportation of foreigners found unlawfully within the United States, and which are being enforced by respondent and the immigration officials serving under his authority and supervision, and which said rules and regulations have no proper application to the petitioner, and do not in their proper and lawful effect justify and warrant nor legally and lawfully justify and [fol. 3] warrant, petitioner's said imprisonment and restraint.

Petitioner has not been and is not committed or detained by virtue of any process or mandate issued by any court of the United States or by any judgment thereof, except as hereinafter set forth, nor is he committed by any final judgment or decree of a competent tribunal of civil or criminal jurisdiction of any cause, nor by virtue of any decision issued upon such judgment, decree or final order, except as hereinafter set forth.

Petitioner is illegally held under arrest, imprisoned and restrained of liberty, as aforesaid, pursuant to a warrant of deportation as an undesirable alien, illegally, erroneously and unjustifiably issued upon an illegal, erroneous and false finding, unjustified in fact and law, that petitioner

entered the United States at the Port of Boston, ex S. S. "Elisha Atkins," on the 25th day of March, 1918, and at the time of his arrest was, and is, in the United States in violation of the Immigration Act of February 5, 1917, in that petitioner was sentenced, subsequent to the passage of said Act, to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude committed withing five years after his entry into the United States. That the said finding is illegal, erroneous, false and unjustified, because the true facts are that petitioner did not enter into the United States on March 25, 1918, within the meaning of the immigration laws and of said Act of February 5, 1917, and was not convicted in this country of a crime involving moral turpitude committed within five years after his entry into the United States, within the meaning of said laws and said [fol. 4] Act; but last entered the United States, within the meaning of said laws and said statute, on or about January 22, 1912, more than five years prior to May, 1921, the adjudged date of commission of the crime of which petitioner was convicted and for which he was sentenced as aforesaid.

Petitioner was born in Denmark, is a seaman by occupation and has been for a long period of years, except during the period when he was imprisoned, as hereinafter set forth; and since 1912, at all times when petitioner has followed his calling as seaman and shipped upon vessels going into foreign waters, he has shipped and sailed exclusively on merchant vessels of the United States, and at all times when not sailing upon such vessels, has remained a resident within the landed territory of the United States.

Petitioner first entered the United States some time prior to 1907, arriving here as a member of the crew of the S. S. "Atlantic." Thereafter and during 1907 petitioner sailed from Boston to Buenos Ayres, where petitioner remained, shipping as a merchant seaman on Argentine merchant vessels, until the fall of 1911, when petitioner again returned to the United States and entered the United States, and entered the service of merchant vessels of the United States as a merchant seaman. Petitioner arrived and landed at Norfolk, Virginia, on or about January 22, 1912. The next day petitioner entered the service of the merchant marine of the United States, shipping as

American seaman on the American schooner, "George D. Cressy," for a round trip voyage from and back to American ports; and since that time has never left the actual landed territory of the United States except in the capacity [fol. 5] of American merchant seaman on board merchant vessels of the United States, whose shipping articles in each case petitioner signed for round-trip voyages calling for discharge of petitioner in an American port.

That the last voyage petitioner ever made into foreign waters was as a member of the crew of the United States merchant vessel "Elisha Atkins," an American schooner, flying the American flag, upon which vessel petitioner signed on as mate, October 19, 1917, at New York, U. S. A., for a continuous round-trip voyage to Para, South America, and back again, with discharge in an American port. The vessel went to Para and back by way of Cienfuegas, Cuba, and arrived at the Port of Boston, Mass., March 25, 1918, where petitioner received his discharge. During the voyage petitioner had at all times remained an American seaman and member of the crew of said merchant vessel of the United States, and was not discharged at any port foreign to the United States; and during the entire voyage was under the protection of the American flag, American laws regulating the American merchant marine, and American consular officials, as an American seaman in the service of an American merchant vessel.

As to this voyage petitioner alleges that the immigration authorities have wrongly and erroneously determined that petitioner quitted his American residence and left the United States, within the meaning of the immigration and merchant marine laws of the United States, and wrongly and erroneously have determined that when petitioner arrived back at the Port of Boston on board the S. S. "Elisha At- [fol. 6] kins," as aforesaid, he made a new "arrival" at and "entry" into the United States, within the meaning of such laws. Petitioner alleges that by reason of the fact that he shipped out of an American port upon an American merchant vessel for a continuous voyage from and back to the American port, with discharge in the American port without once being discharged in a foreign port, petitioner did not depart from the United States, within the meaning of such laws, but remained during the course of such voyage

an American resident within the meaning the immigration and naturalization laws of the United States, and remained at all times within the United States, within the meaning of such laws. And petitioner alleges that his last "arrival" at and "entry" into the United States, within the meaning of such laws was his "arrival" and "entry" in January, 1912, when petitioner arrived upon and was discharged from the S. S. "Avon" at Norfolk, Virginia, as aforesaid.

In 1918 petitioner became a delegate of the Seamen's Union, at the Port of New York, remaining in this capacity until 1920, when he became agent for the Seamen's Union in Portland, Maine. At New York, on June 6, 1919, petitioner took out first papers for citizenship. On or about May 1, 1921, while petitioner was agent for the Seamen's Union at Portland, Maine, as aforesaid, a strike by seamen on the Atlantic Coast was called. During the strike, and during a disturbance between seamen on board the merchant ship "Mary F. Barrett," a seaman named James Walker was killed on the aforementioned ship, on or about May 21, 1921. Seven men, including petitioner, were arrested and and charged with the murder of the seaman. [fol. 7] On advice of counsel, petitioner pleaded guilty to manslaughter, although he had had nothing to do with the fight in which the death occurred, did not see the fight, and had nothing to do with the killing. The only basis on which petitioner had become implicated was the mere fact that he was known to be an agent for the Seamen's Union, which had called the strike. On June 17, 1921, petitioner was sentenced, in the Cumberland County Court, Portland, Maine, for manslaughter, to a maximum term of six years and a minimum term of four years and six months imprisonment. Petitioner thereafter served his term of imprisonment in the Maine States Prison, Thomaston, Maine, and became eligible for parole, and was paroled, in December, 1925.

That during the period of petitioner's imprisonment as aforesaid, and on or about November 3, 1921, United States Immigrant Inspector Carr G. Horn, took petitioner into custody at the said Maine State Prison, and detained petitioner in said State Prison, and made an alleged examination into the status of petitioner and petitioner's right to

remain in the United States, and into the eligibility of petitioner to deportation under the immigration laws as a person unlawfully in the United States. At such examination and hearing minutes were taken, which will establish that the facts were shown substantially as hereinabove set forth. After such hearing and examination, the said immigrant inspector found and ruled, and, as petitioner alleges, erroneously and unjustifiably found and ruled, that the petitioner entered the United States at the Port of Boston, Mass., March 25, 1918, ex S. S. "Elisha Atkins," and that petitioner was unlawfully in the United States in that [fol. 8] petitioner had been sentenced, subsequent to the passage of the Immigration Act of February 5, 1917, to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude committed within five years after entry.

Petitioner alleges that this finding and ruling was and is erroneous and false and unjustified, in that petitioner last entered the United States on or about January 22, 1912, more than five years, to wit, more than nine years, before the adjudged killing of James Walker on May 21, 1921.

That petitioner was ordered deported on the basis of such findings and rulings, and upon petitioner being paroled in December, 1925, petitioner was taken into custody by the immigration authorities at New York for deportation. Thereafter, petitioner took an appeal to the Secretary of Labor, as provided by law, and on said appeal the determination of said immigration authorities, as hereinabove mentioned, was affirmed on or about December 30th, 1925.

That thereby there has been a final determination, and petitioner has no appeal from the determination of the Secretary of Labor, affirming the order of deportation of said immigration authorities. Petitioner has exhausted his legal remedies other than by writ of habeas corpus.

In addition and thereafter and on or about December 30, 1925, one Christian Rasmussen, a friend of petitioner, executed a petition for a writ of habeas corpus to obtain an examination by the courts into the legality of your present petitioner's imprisonment, alleging in said petition that petitioner was illegally imprisoned by virtue of a wrongful order of exclusion; and thereupon a writ of habeas corpus [fol. 9] was allowed by Hon. John C. Knox, U. S. D. J.,

on or about December 31, 1925. The writ was returnable on January 8, 1926, and was argued before Hon. Francis A. Winslow, who thereafter, and on or about January 27, 1926, rendered a decision dismissing the said writ and remanding your petitioner to the custody of the immigration authorities. Petitioner thereupon took an appeal to the United States Circuit Court of Appeals, which appeal was allowed by Hon. Henry W. Goddard, U. S. D. J., on February 9, 1926. Thereafter the said appeal was argued before the United States Circuit Court of Appeals, before Hough, Hand and Mack, Circuit Judges; and on or about December 13th, 1926, the said Court rendered a decision, by a divided court, voting two to one, affirming the said order of the District Court. A majority opinion was written by Hon. Julian W. Mack, U. S. Circuit Judge, and concurred in by Hon. Charles M. Hough, U. S. Circuit Judge; and a dissenting opinion was written by Hon. Learned Hand, U. S. Circuit Judge, who voted to reverse. On this decision a judgment was entered December 14, 1926, affirming the judgment of the District Court.

Thereafter and on March 7, 1927, a writ of certiorari was granted by the Supreme Court of the United States to review the case. At the time when the original petition for writ of habeas corpus was filed and the writ first allowed by the District Court, as aforesaid, the writ was directed to Hon. Henry H. Curran, the then Commissioner of Immigration. In January, 1928, after a suggestion for abatement was filed in the Supreme Court by the United States [fol. 10] Solicitor General, that Court, on January 9, 1928, rendered a per curiam decision, wherein it was pointed out that Henry H. Curran, sued as Commissioner of Immigration, resigned office on March 31, 1926, and was succeeded by Benjamin M. Day, who now holds that office; and that no motion was made to continue the cause against such successor in office, and that the six months period within which such a motion could be made had expired; and the Supreme Court accordingly vacated the judgments entered in the District Court and in the Circuit Court of Appeals and remanded the cause to the District Court with a direction to dismiss the cause as abated.

That pursuant to such direction, an order or judgment was entered in the United States District Court for the

Southern District of New York, on the 19th day of March, 1928, dismissing the cause as abated.

That by reason of the granting of a writ of certiorari by the Supreme Court, and that Court's vacating the judgments entered in the District Court and in the Circuit Court of Appeals, and by reason of the judgment or order entered in the District Court dismissing the cause as abated, and vacating the judgments theretofore rendered, there has never been any final adjudication by the courts as to the right of the petitioner to be released and set at liberty on writ of habeas corpus. In addition, it was through no fault of this petitioner that the issues as raised by the former writ of habeas corpus were not finally passed upon and determined by the Supreme Court, as it was through no neglect of this petitioner that the necessity of substituting as respondent the newly appointed Commissioner of Immigration in place of the resigned Commissioner was overlooked.

[fol. 11] That during the time that the issues presented by the former writ obtained by Mr. Rasmussen were pending in the United States Circuit Court of Appeals and the United States Supreme Court, petitioner was allowed liberty under bail of $1,000 as fixed by Hon. Francis A. Winslow. If the Court sees fit to permit petitioner liberty until this writ now applied for can be argued and finally determined, petitioner believes he can provide similar bail.

That attached hereto is a copy of the record of transcript of record as filed in the United States Supreme Court on application for writ of certiorari, which includes the record of the proceedings in the United States Circuit Court of Appeals, in the United States District Court, and a complete copy of the record of hearings before the Commissioner of Immigration and orders made thereon, as filed by the Commissioner of Immigration in said courts; together with a copy of the decision of the United States Supreme Court directing dismissal of the previous writ as abated, and a copy of the judgment or order of the District Court, entered thereon, dismissing the said cause as abated.

That the petitioner has not violated any of the provisions of Section 19 of the aforementioned Act, relating to deportation within certain times of aliens found in the United States in violation of law. Petitioner is not a member of

the classes excluded by law. Nor has he entered the United States in violation of any law. Petitioner has not advocated nor talked the unlawful destruction of property, or anarchy, or overthrow by force of the Government of the United States or the assassination of officials. Petitioner is not now nor about to become a public charge. [fol. 12] He has not been sentenced to imprisonment for a term of one year or more because of conviction in this country of crime involving moral turpitude committed within five years of the entry of the alien into the United States nor has he been sentenced more than once to a term of imprisonment for a crime involving moral turpitude. Petitioner has not managed or received any share or benefit from the earnings of a house of prostitution, or of any inmates, or been connected with such house, or place or resort frequented by prostitutes; or assisted any prostitute or protected or promised to protect any prostitute; nor imported or attempted to assist in importing any person for the purpose of prostitution or immoral purposes. Nor has the relator been convicted or admitted the commission of a felony prior to entry. Nor has he entered the United States except through the port of entry and inspected by immigration officials; nor has he been deported prior hereto, nor has he been pardoned.

That petitioner has resided continuously in the United States of America by reason of serving on board American vessels and an actual shore resident, for a period longer than nine years prior to the commission of the crime referred to herein and for longer than five years prior to the passage of the Act of February 15, 1917. Petitioner became exempt from seizure or deportation by reason of his having been an actual resident in the United States for a period of over five years prior to the commission of the crime for which he was convicted and sentenced.

Petitioner alleges that there was no evidence before the Department of Labor upon which to base its findings and [fol. 13] conclusions upon which the order of deportation was issued and, therefore, alleges that such evidence as was before the Department of Labor does not support said findings or said order. Petitioner alleges that the issues herein have not, therefore, been litigated by the Department of

Labor in proceedings which were regular, fair, and in compliance with the statutes applicable thereto, but an arbitrary determination has been made which is unfair to relator and contrary to the facts and the law.

Petitioner believes that he will be deported from the first available ship, perhaps immediately. Petitioner respectfully petitions that a writ of habeas corpus be issued herein immediately.

That there is no authority in law for the further detention of petitioner or which sustains the so-called rules or regulations under and by virtue of which petitioner is illegally held and deprived of liberty and refused the privileges enjoyed by such persons generally. No previous one who has declared his intention of becoming a citizen of the United States, and sworn to uphold the Constitution; and that as such petitioner is entitled to the liberty and privileges enjoyed by such persons generally. No previous application has been made for the relief herein prayed for, except as hereinabove set forth. Your petitioner has no other adequate remedy at law.

Wherefore, your petitioner prays that a writ of habeas corpus be issued herein; and that petitioner be ordered to be freed and set at liberty.

Niels Peter Claussen.

[fol. 14] *Duly sworn to by Niels Peter Claussen. Jurat omitted in printing.*

[fol. 15] FORMER WRIT OF HABEAS CORPUS

The President of the United States of America, to Hon. Henry C. Curran, Commissioner of Immigration, Ellis Island, Greeting:

We command you, that all and singular business and excuses being laid aside, you and each of you appear and attend before the Judge of the District Court of the United States of America, for the Southern District of New York, at a Stated Term of said Court, to be held in the United States Court Room, No. 235, in the U. S. Court, Southern District of New York, on the 8th day of January, 1926, at 10:30 o'clock in the forenoon of that day and that you

have the body of N. P. Clausen, mentioned in the petition, by you imprisoned and detained as it is said, together with the time and cause of such imprisonment and detention by whatsoever name the said person is called or charged, to do and receive what shall then and there be considered concerning said petitioner and have you then there this writ.

Witness, Hon. August N. Hand, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, on the 31st day of December, in the year of our Lord one thousand nine hundred and twenty-five.

Alex. Gilchrist, Jr., Clerk.

Silas B. Axtell, Attorney for Petitioner, 11 Moore Street, New York City.

Writ Allowed. Jno. C. Knox, U. S. D. J.

[fol. 16] In United States District Court, Southern District of New York

U. S. ex rel. N. P. Claussen,

against

Henry C. Curran, Commissioner of Immigration

Petition for Former Writ of Habeas Corpus

To the Judges of the United States District Court for the Southern District of New York:

The petition of N. P. Claussen, ex rel. Christian Rasmussen, respectfully shows:

That the relator is imprisoned and restrained of liberty at Ellis Island, illegally and without authority in law. That the relator is held in custody by the respondent and his subdordinate officials under the color and by virtue of certain so-called rules and regulations issued by the United States Secretary of Labor, to regulate the immigration of foreign immigrants, and which are being enforced by re-

spondent and the immigration officers serving under his authority and supervision.

That the said relator has not been and is not committed or detained by virtue of any process or mandate issued by any court of the United States or by any judgment therein, nor is he committed by any final judgment or decree of a competent tribunal of civil or criminal jurisdiction of any cause, nor by virtue of any decision issued upon such judg- [fol. 17] ment, decree or final order except as hereinafter set forth.

That he is held under arrest pursuant to an order of exclusion from the United States as an undesirable alien under 4289¼jj., Act of February 5th, 1917, Secs. 19 and 20.

That prior thereto and on or about the 17th day of December, 1924, the Commissioner of Immigration at the Port of New York, or the Commissioner of Immigration in Portland, Maine, or the Inspector of Immigration, or an official of the Department of Immigration, having jurisdiction over the prison located at Thomaston, Maine, made an alleged examination into the status of the relator and wrongly and erroneously determined that the relator was an undesirable alien and thereupon made an order excluding the relator and directed that he be deported. Thereafter your relator took an appeal to the Secretary of Labor, as provided by law and on said appeal the determination of the Commissioner or such other officer hereinbefore mentioned was affirmed on or about the 20th day of December, 1925.

That thereby there has been a final determination and your relator has no appeal from the determination of the Secretary of Labor affirming the order of exclusion of the Commissioner of Immigration. That your relator has exhausted his legal remedies other than by writ of habeas corpus.

That your relator was born in Denmark, is a seaman by occupation and has been for a number of years, except as hereinafter set forth, and that since 1912 he has sailed [fol. 18] exclusively on American ships. That your relator first entered the United States some time prior to 1907 as a member of the crew of the S. S. "Atlantic." That during 1907 your relator sailed from Boston to Buenos Aires, where he remained in the service of Argentine ships until the fall of 1911, when he returned to the United States on

an American vessel, the "Avon," landing in Newport News on or about the 20th of January, 1912.

That since his entry in 1912, your relator sailed on American ships exclusively and during the war sailed on the army transports. In 1918 your relator became a delegate of the Seamen's Union in the Port of New York, where he remained constantly in the service of said Union until 1920 when he became agent for the Seamen's Union in Portland, Maine. Your relator had taken out his first papers for citizenship and in May or June, 1921, had sixteen days to run before receiving his full papers when he was indicted and convicted of complicity in the murder of a seaman aboard the ship "Mary F. Barrett." At that time the relator was agent for the Union. On the 1st of May, 1921, a strike by seamen on the Atlantic Coast was instigated. A seaman was killed on the aforementioned ship, "Mary F. Barrett" on or about the 21st of May, 1921. The relator was one of seven convicted, and was sentenced from 4½ to 7 years in prison at Thomaston, Maine. That the relator's sentence was completed only recently and that he arrived at Ellis Island, Port of New York on Tuesday, December 29th, 1925.

[fol. 19] That petitioner has been informed by the Law Department of Ellis Island that the relator is to be deported immediately. That he has endeavored to see the relator but has been refused. That he has not seen the record of the said relator taken before the Commissioner of Immigration. That he has not means of obtaining this record. That your petitioner is a member of the Seamen's Union and has been an officer of the said Union for six years. That the petitioner is a citizen of the United States and is a friend of the relator. That the source of his information are records of the said Seamen's Union.

That the relator has not violated any of the provisions of Section 19 of the aforementioned Acts, relating to deporation within certain times of aliens entering or found in the United States in violation of law. That the petitioner is not a member of any of the classes excluded by law. Nor has he entered the United States in violation of any law. That he has not advocated or talked the unlawful destruction of property, or anarchy, or overthrow by force of the Government of the United States, or the assassination of

officials. That he is not now or about to become a public charge. That he has not been sentenced to imprisonment for a term of one year or more because of conviction in this country of crime involving moral turpitude committed within five years of the entry of the alien into the United States nor has he been sentenced more than once to a term of imprisonment for a crime involving moral turpitude. That the relator has not managed or received any share or benefit from the earnings of a house of prostitution, or of [fol. 20] any inmates, or been connected with such house, or place or resort frequented by prostitutes; or assisted any prostitute or protected or promised to protect any prostitute; nor imported or attempted to assist in importing any persons for the purpose of prostitution or immoral purposes. Nor has the relator been convicted or admitted the commission of a felony prior to entry. Nor has he entered the United States except through the port of entry and inspected by immigration officials; nor has he been deported prior thereto, nor has he been pardoned.

That your relator has resided continuously in the United States of America by reason of serving continuously during such time as a seaman on board American vessels and as an actual shore resident, for a period longer than nine years, prior to his seizure herein and for longer than five years prior to the passage of the Act of February 15th, 1917. That your relator became exempt from seizure or deportation by reason of his having been an actual resident in the United States for a period of over five years prior to the commission of the felony for which he was convicted and sentenced.

your relator alleges that there was no evidence before the Department of Labor upon which to base its findings and conclusions upon which the order of exclusion was issued and therefore alleges that such evidence as was before the Department of Labor does not support said findings or said order.

[fol. 21] Your relator, therefore, alleges that the issues herein have not been litigated by the Department of Labor or proceedings which were regular, fair, and in compliance with the statute applicable thereto, but an arbitrary determination has been made which is unfair to relator and contrary to the facts in the law.

Your petitioner does not attach hereto copy of the record of the hearing before the Commissioner of Immigration nor copy of the record before the Secretary of Labor. Nor the order of either the Commissioner or the Secretary of Labor for the reason that the petitioner has not been able to procure the same.

Your petitioner alleges that he has been informed that the relator will be deported upon the first available ship, perhaps tomorrow. Your petitioner respectfully petitions that a writ of habeas corpus be issued herein immediately.

That there is no authority in law for the further detention of your relator or which sustains the so-called rules or regulations or statutes under and by virtue of which relator is legally held and deprived of liberty and refused the privileges enjoyed by a resident of the United States, and one who has declared his intention of becoming a citizen of the United States, and that as such relator is entitled to the liberty and privileges enjoyed by such persons generally. That your relator has no other adequate remedy at law.

Wherefore, your petitioner prays that a writ of habeas corpus be issued herein.

Christian Rasmussen.

[fol. 22] *Duly sworn to by Christian Rasmussen. Jurat omitted in printing.*

[fol. 23] In United States District Court

[Title omitted]

Return to Former Writ of Habeas Corpus

Southern District of New York, ss:

Patrick Krisf, being duly sworn, says that he is, and during all the times herein mentioned has been, an immigrant inspector in the service of the United States; that he is attached to the Law Department of the Immigration Service of the United States at Ellis Island, New York; that he in his official capacity is authorized to make and in behalf of the respondent hereby makes the following return to the writ of habeas corpus herein.

In compliance with the direction of this Court, the body of the said alien in his own proper person produced herewith before this Court at the time specified in the writ.

It is respectfully urged that upon its face the petition upon which the writ was granted is insufficient in law, and that the writ should therefore be quashed because

[fol. 24] (a) The petition does not allege facts to show that the proceedings of the Department of Labor upon which was issued the warrant of deportation pursuant to which the said alien is held, were not regular, fair and in compliance with the statute applicable in such cases, nor facts from which this Court can determine that the proceedings were either irregular, unfair or not in compliance with said statute;

(b) The petition does not allege any facts which entitled this Court to review the findings and conclusions of the Department of Labor upon which the warrant of deportation was issued;

(c) It is not alleged that there was no evidence before the Department of Labor upon which it based or could have based its findings and conclusion in accordance with which the warrant of deportation was issued;

(d) It does not appear by allegation of facts that the issues sought by the petition now to be litigated in this Court have not already been determined by the Department of Labor adversely to the said alien in proceedings which were regular, fair and in compliance with the statute applicable thereto.

As appears by the records of the Department of Labor of the United States with respect to the above-named alien, copies of which are produced and filed herewith as part of this return:

(1) The record shows that this alien last entered the United States from a foreign country, Cuba, at Boston, on [fol. 25] March 25, 1918, as a member of the schooner "Elisha Atkin." The certificate of admission shows that at that time he was 42 years of age; a native and subject of Denmark; occupation, seaman. After his arrival, he continued working as a seaman, finding employment on American ships in coastwise trade.

(2) On June 17, 1921, he was sentenced by the Cumberland County Court of Portland, Maine, to serve a term of imprisonment of not less than four years, six months, and not more than six years, on a conviction of manslaughter, in connection with the killing of one James Walker on May 21, 1921. On the above facts the warrant of deportation was issued.

(3) There is no merit to the writ. The facts disclose that the alien, within five years of his entry into the United States from a foreign port, did commit a crime involving moral turpitude, for which he was sentenced to a term of imprisonment of more than one year, placing him within a deportable class, under Section 19 of the Immigration Act of February 5, 1917. Although the alien states he was not guilty of the actual commission of the crime for which he was imprisoned, he admits that the sentence was given on a plea of guilty. In this connection, it is interesting to note that on an application made to the Governor and Council of Maine, a pardon was denied.

(4) As appears from the record the alien was duly informed and apprised of the charges against him and was afforded a full, complete and fair hearing by the Department of Labor upon the said charges and a full, complete [fol. 26] and fair opportunity to answer and submit evidence upon them. There was evidence before the Department of Labor sufficient to sustain the said charges. The Department of Labor duly found that the charges were sustained, and they were in fact fully sustained by the proofs that were before and were considered by the Department of Labor. In any event, it certainly cannot be said on the record herein that the Department of Labor abused the discretion vested in it by Congress and in the absence of such abuse its determintaion was final and conclusive.

Wherefore, deponent prays that the writ of habeas corpus herein be dismissed and that the said alien be remanded to the custody of the Commissioner of Immigration at Ellis Island, New York, to be dealt with in accordance with the said warrant of deportation

Patrick Krisf, Immigrant Inspector.

Sworn to before me this 19th day of January, 1926.
Armand Chankalian, Notary Public, New York Co.
(Seal)

Clerk's No. 71, Reg. No. 7317.
Commission expires March 30, 1928.

[fol. 27] 2525/30. June 27, 1921.

Mr. S. H. Howes, Inspector in Charge, Portland, Me.

As directed by you I investigated the case of Niels Peter Clausen at State's Prison, Thomaston, Me., on the 26th instant, and the following data was secured concerning him:

Aged 45, single, seaman, subject of Denmark, Scandinavian race, born Fiskbek, Denmark, last entered the U. S. (from Cuba) at New York, March 29, 1918, ex Schooner "Elisha Atkin"; convicted of manslaughter Cumberland County, Me., June 17, 1921, and sentenced to from 4½ to 6 years at Thomaston.

John H. Jensen, Immigrant Inspector.

Application for Warrant of Arrest under Section 10 of the Act of February 5, 1917

(Letterhead of U. S. Department of Labor)

No. 17685/6

Boston, Mass., August 31, 1921.

The undersigned respectfully recommends that the Secretary of Labor issue his warrant for the arrest of Niels P. Clausen, age 45, Scandinavian, who arrived as a member of the crew of Sch. "Elisha Atkins" at this port March 25, 1918, the alien named in the attached certificate, upon the following facts which the undersigned has carefully inves- [fol. 28] tigated, and which, to the best of his knowledge and belief, are true:

(1) (Here state fully facts which show alien to be unlawfully in the United States. Give sources of information, and, where possible, secure from informants and forward with this application duly verified affidavits setting forth the facts within the knowledge of the informants.)

From the enclosed report by Inspector Jensen, it appears that the above named alien has been sentenced to imprison-

ment for a term of one year or more because of conviction in this country of a crime involving moral turpitude.

9/12/21

Issue W/A
Committee
OURY

(2) The present location and occupation of above-named alien are as follows: State Prison, Thomaston, Me.

Pursuant to Rule 22 of the Immigration Regulations there is attached hereto and made a part hereof the certificate prescribed in subdivision 2 of said Rule, as to the landing or entry of said alien, duly signed by the immigration officer in charge at the port through which said alien entered the United States.

H. J. Skeffington, Commissioner.

JAD
Inc
Rubber stamps (3)—one illegible:

[fol. 29] Certificate of Admission of Alien

U. S. Department of Labor, Immigration Service

Boston, Mass., Aug. 31, 1921.

I hereby certify that the following is a correct record and statement of facts relative to the admission to the United States of the alien named below:

(1) S. S., Sch. "Elisha Atkins"; Line, —
(2) Date arrival, Mar. 25, 1918; Manifest No., 140 Crew List; No. 1 Class, —;
(3) Port at which arrived, Boston, Mass.;
(4) Name, Nieles P. Clausen; age, 42; sex, M.;
(5) Married, S.; occupation, Seaman; able to read and write, Yes;
(6) Native of Denmark; race, Scandinavian;
(7) Last permanent residence, —;
(8) Destination, —;
(9) By whom passage paid, —; money brought, $—;
(10) Whether in U. S. before, —; when, —; where, —;
(11) To whom going, —; condition of health, —;

(12) Height, 5' 8; complexion, —; color of hair, —;
[fol. 30] (13) Color of eyes, —; identification marks, —;
(14) Place of birth, —; examined by Inspector —;
(15) How admitted, —; accompanied by, —;
(16) Remarks: Arrived here as mate of vessel; signed on Oct. 19, 1917, at New York.

(Signature) H. J. Skeffington (Official title) Commissioner.

(This form is insufficient as a basis for a Petition for Naturalization.)

Warrant—Arrest of Alien

United States of America, Department of Labor, Washington

No. 55131/84

To Commissioner of Immigration, Boston, Mass., or to any Immigrant Inspector in the service of the United States:

Whereas, from evidence submitted to me, it appears that the alien Niels P. Clausen, who landed at the port of Boston, Mass., ex SS "Elisha Atkins," on the 25th day of March, 1918, has been found in the United States in violation of the immigration act of February 5, 1917, for the following among other reasons:

[fol. 31] That he has been sentenced, subsequent to the passage of said Act, to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude committed within five years after his entry into the United States.

I, E. J. Henning, Assistant Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law.

The expenses of detention hereunder, if necessary, are authorized, payable from the appropriation "Expenses of Regulating Immigration, 1922." Pending further proceedings the alien may be released from custody upon furnishing satisfactory bond in the sum of $1,000.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 14th day of September, 1921.

E. J. Henning, Assistant Secretary of Labor. (Seal)

JF.

Rubber stamp (on back):

Received Sep. 19, 1921, Immigration Service, Portland, Maine.

[fol. 32] (Letterhead of U. S. Department of Labor)

File No. 2525/30

Report of Hearing in the Case of Niels P. Clausen, or Niels Peter Clausen

Under Department warrant No. 55131-84, dated Sept. 14, 1921.

Hearing conducted by Inspector Carr G. Horn, at Maine State Prison, Thomaston, Me. Date, Nov. 3, 1921.

Alien taken into custody at Maine State Prison, Thomaston, Me., 6:00 P. M., Nov. 3, 1921, by Inspector Carr G. Horn, and detained in State Prison.

Minutes taken and transcribed by Inspector Carr G. Horn.

Said Niels P. Clausen, or Niels Peter Clausen, being able to speak and understand the English language satisfactorily, no interpreter was employed.

Said Niels P. Clausen, or Niels Peter Clausen, was informed that the purpose of said hearing was to afford him an opportunity to show cause why he should not be deported to the country whence he came, said warrant of arrest being read and each and every allegation therein contained carefully explained to him. Said alien was offered an opportunity to inspect the warrant of arrest and the evidence upon which it was issued, which privilege was ac-
[fol. 33] cepted. The alien being first duly sworn, the following evidence was presented:

Q. What is your name?

A. Niels Peter Clausen.

Q. You are advised that you have the right to be represented by counsel at this hearing; do you wish to be so represented?

A. No.

Q. Do you then waive all rights of counsel and are you willing to proceed now with the hearing?

A. Yes.

Q. How old are you?

A. 46; I was born Aug. 28, 1875, at Fiskbek, Denmark.

Q. What was your father's name?

A. Jorgen Clausen.

Q. And your mother's?

A. Johanna Katrina Clausen.

Q. Where was your father born?

A. In Denmark.

Q. Did he ever live in the U. S.?

A. No.

Q. Are your father and mother living?

A. Yes, at Hjarbek, Denmark.

Q. Are you married?

A. No.

Q. When, where and by what means did you arrive in the United States?

A. I first came many years ago. I came on a full-rigged British ship, the Avon, and landed at Norfolk, Va., about Jan. 22, 1912. The next day I shipped in a five-masted American schooner, the "George D. Cressey," and have sailed under the American flag ever since. During the war I was in the S. S. "City of Memphis" in transatlantic service; I was boatswain. She was sunk by a submarine 45 miles off Fastnet, England, while I was in her. At that time I was chief mate. My last ship was the schooner [fol. 34] "Elisha Atkins." We went to Para, South America, and back to the U. S. by way of Cienfuegos, Cuba.

Q. The record at hand shows that you arrived in the U. S. at the port of Boston, Mass., March 25, 1918, on the "Elisha Atkins"; is that correct?

A. Yes; that was my last foreign trip; I have been in American ships coastwise since then.

Q. Have you any relatives in the U. S.?

A. Yes, a brother, Marinus Clausen, at 67-69 Front Street, New York.

Q. Are you a subject of Denmark?

A. Yes.

Q. Have you ever applied for citizen's papers in this country?

A. Yes, I got my first papers in New York, June 6, 1919; I have not got my final papers.

Q. When and on what charge were you sentenced to prison?

A. June 17, 1921, for manslaughter.

Q. How did you plead?

A. I pleaded guilty by advice of counsel, but as a matter of fact I didn't see the fight at all. There were seven of us arrested. Our lawyer thought we would get off easier if we pleaded guilty.

(Note: The records of the Cumberland County Court, Portland, Me., show that the alien, with others, including the aliens Peter Derks and Nils Rudnquist, was sentenced on June 17, 1921, for manslaughter, for the killing of James Walker on May 21, 1921, in Portland.)

[fol. 35] Q. Were you ever in prison before?

A. No.

Q. Have you anything further to say as to why you should not be deported?

A. Yes, if I thought I was a menace to the U. S. I never would want to stay here, but I can get all kinds of references to my good character, I like this country and I have the American viewpoint.

The Prison record shows that Niels P. Clausen, No. 5047, was sentenced June 17, 1921, for manslaughter, to a maximum term of 6 years and a minimum term of 4 years 6 months; and that he will be eligible for parole in December, 1925. The Warden has been requested to notify this office in advance of the date of the alien's release.

From the foregoing evidence, I, the duly authorized examining officer, do find as follows: That the said Niels P. Clausen, or Niels Peter Clausen, is an alien, namely, a subject of Denmark; that he entered the United States at the port of Boston, Mass., March 25, 1918, ex S. S. "Elisha

Atkins"; and that he is unlawfully in the United States in that he has been sentenced, subsequent to the passage of the Immigration Act of Feb. 5, 1917, to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude committed within five years after entry.

I would therefore respectfully recommend that he be deported upon the expiration of his sentence.

Carr G. Horn, Immigrant Inspector.

[fol. 36] (Letterhead of U. S. Department of Labor)

Stamp—Received Bureau of Immigration Nov. 12, 1921, Mails & Files.

Refer to No. 2525/30.
Bureau No. 55131/84.

Office of Inspector in Charge, Port of Portland, Maine

Nov. 7, 1921.

Commissioner General of Immigration,
Washington, D. C.:

In re Niels P. Clausen, or Niels Peter Clausen

Niels P. Clausen, or Niels Peter Clausen, single, 46, seaman, Scandinavian race, native and subject of Denmark, entered the U. S. at the port of Boston, Mass., March 25, 1918, ex Sch. "Elisha Atkins." The warrant of arrest charges that he has been sentenced, subsequent to the passage of the Immigration Act of Feb. 5, 1917, to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude committed within five years after entry. Hearing held at Maine State Prison, Nov. 3, 1921.

Rights of counsel were waived by the alien.

Warrant was duly read to alien. No additional charges.

The evidence shows that the alien was born in Denmark, and has his "first papers"; that he arrived as above noted, from South American and Cuban ports, this being his last foreign trip. It appears that he first arrived in the U. S. [fol. 37] some 9 years ago, and since that time has sailed

continuously under the American flag, up to the time of his conviction. He was sentenced in the Cumberland County Court, Portland, Me., on June 17, 1921, to serve a term of not less than 4 years 6 months and not more than 6 years for manslaughter in connection with the killing of James Walker on May 21, 1921.

Alien is detained in State Prison for expiration of sentence. Alien claims to have destroyed his Passport and other papers of identification.

The findings of the examining officer are concurred in and deportation is respectfully recommended, upon expiration of sentence.

S. H. Howes, Inspector in Charge.

No. 55131/84. November 16, 1921.

Niels P. Clausen, or Niels Peter Clausen

Memorandum:

The Bureau submits this case upon letter of transmittal hereunder, and concurs in the recommendation of the Inspector in Charge, Portland, Maine, that the alien be ordered deported to Denmark at Government expense, on the charge contained in the warrant of arrest.

[fol. 38] Execution of the warrant to be deferred until such time as the alien is released from prison.

For the Commissioner-General, (Name illegible) Special Assistant.

JF.

So Ordered:

Theodore G. Risley, Acting Secretary.

Rubber stamps (2).

(Letterhead of U. S. Department of Labor)

In answering refer to No. 55131/84.

November 19, 1921.

Inspector in Charge, Immigration Service, Portland, Me.

Sir: The Bureau acknowledges the receipt of your letter of Nov. 7th, No. 55131/84, transmitting record of hearing

accorded the alien Niels Peter Clausen, or Niels P. Clansen, who landed at the post of Boston, Mass., ex S. S. "Elisha Atkins," on March 25, 1918.

[fol. 39] After a careful examination of the evidence submitted in this case, the Department is of opinion that the alien is in the United States in violation of law. You are therefore directed to cause him to be taken into custody and conveyed to New York, N. Y., for deportation, the expenses incident to such conveyance, including the employment of an attendant to assist in delivery, if necessary, at a nominal compensation of $1.00 and expenses both ways, being authorized, payable from the appropriation "Expenses of Regulating Immigration, 1922."

The alien should be conveyed to New York for deportation as soon as the necessary arrangements have been made by the Ellis Island office, with which you should communicate.

Respectfully,

(Stamp Illegible) For the Commissioner General. Special Assistant.

Approved:

(Signed E. J. Henning) Nov. 19, 1921, Mail and Files, Assistant Secretary.

Inclose W. D. No. 7429.

RN.
Rubber stamps (1).

[fol. 40] Warrant—Deportation of Alien

United States of America, Department of Labor, Washington

No. 55131/84.

To Commissioner of Immigration, Ellis Island, N. Y. H., or to any Officer or Employee of the U. S. Immigration Service:

Whereas, from proofs submitted to me, after due hearing before Immigrant Inspector Carr C. Horn, held at Thomaston, Me., I have become satisfied that the alien Niels Peter Clausen, or Niels P. Clausen, who landed at the port of

Boston, Mass., ex S. S. "Elisha Atkins," on the 25th day of March, 1918, has been found in the United States in violation of the immigration act of February 5, 1917, to wit:

That he has been sentenced, subsequent to the passage of said Act, to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude committed within five years after his entry into the United States, and may be deported in accordance therewith:

I, E. J. Henning, Assistant Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to return the said alien to Denmark, the country whence he came, at the expense of the appropriation "Expenses of Regulating Immigration, 1922." You are directed to purchase transporta-[fol. 41] tion for the alien from New York, N. Y., to his home in Denmark at the lowest available rate, payable from the above-named appropriation.

Execution of this warrant should be deferred until the alien has been released from prison.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 19th day of November, 1921.

(Signed) E. J. Henning, Nov. 19, 1921, Mail and Files, Assistant Secretary of Labor.

RN

(Letterhead of U. S. Department of Labor.)

No. 55131/84

June 28, 1924.

District Director of Immigration,
Portland, Maine:

It is requested that you submit a report of the present status of the case of Niels Peter Clausen, your file No. 2525/30.

Acting Commissioner General.

BS.

Rubber stamp:

(Signed) W. W. Sibray Jun 28 1925 Mail & Files

[fol. 42] 55131/84

November 19, 1921.

Official copies furnished the Commissioner of Immigration, Ellis Island, N. Y. H., for his information. Upon his release from prison, the alien will be conveyed to your port by an officer detailed by the Inspector in Charge at Portland, Me. On June 17, 1921, he was sentenced to serve a term of from 4 to 6 years.

Foreign address: Father, Jorgen Clausen lives in Fiskbek, Denmark.

For the Commissioner General.
Special Assistant.

RN

Rubber stamp (illegible).

(Letterhead of U. S. Department of Labor.)

No. 2525/30

Office of Immigrant Inspector

June 30, 1924.

Commissioner General of Immigration,
Washington, D. C.:

In reply to your letter of June 28th, No. 55131/84, as to the present status of the case of Niels Peter Clausen, you [fol. 43] are advised that this alien is serving a six years sentence in the Maine State Prison, Thomaston, Maine, and he will be eligible for parole in December, 1925.

Recently attorneys in Portland made application to the Governor and Counsel for a pardon for this alien, informing the Governor that the alien would be deported immediately upon his release from prison, but the pardon was denied.

S. H. Howes, District Director of Immigration.
SHH RAH.

Rubber stamps (2).

(Letterhead of U. S. Department of Labor.)

No. 2525/30.

Office of Immigrant Inspector, Portland, Me.

January 30, 1925.

Commissioner General of Immigration,

Washington, D. C.:

In reference to the case of the alien Niels Peter Clausen, your file 55131/84, you are advised that in view of the fact that the alien will be eligible for parole December, 1925, he is making application for permission to ship one way for-[fol. 44] eign in lieu of deportation, and now presents his Certificate of Nationality in lieu of Passport.

As there is no Danish Consul at this port I would respectfully request that you endeavor to have the same extended in order that he may use it in December this year.

I would also respectfully request to be informed if the Department desires to authorize the alien to reship one way foreign in lieu of deportation.

Certificate of nationality enclosed.

S. H. Howes, District Director.

SHH RAH

Two rubber stamps:

Incl. 20332.

55131/84—Portland, Maine

February 10, 1925.

In re: Niels Peter Clausen, aged 46.

The case comes before the Board of Review in warrant proceedings.

No interested parties.

This record relates to a native of Denmark, of Scandinavian race, aged 46, male, single, seaman, who entered at Boston on March 25, 1918, as a seaman and has remained in this country. In November, 1921, he was ordered deported to Denmark at government expense, on the grounds

that he has been sentenced for a year or more for a crime involving moral turpitude; the offense for which he was sentenced being manslaughter.

[fol. 45] The case comes for attention at this time by means of a request made by the alien for permission to ship foreign in lieu of deportation. He will be eligible for parole the latter part of this year. Since the alien is a seaman and will presumably follow the sea hereafter, in any event it is believed that he may properly be permitted to ship foreign in lieu of deportation.

It is recommended that the alien be permitted to ship foreign in lieu of deportation, if practicable.

(Signature illegible), Chairman, Secy. & Comr. Genl's Board of Review.

GWS/CMB

So ordered: Robe Carl White, Second Assistant Secretary.

Rubber stamp: Received Feb 10 1925 Law Division

55131/84

October 29, 1925.

Commissioner of Immigration,
Ellis Island, New York Harbour,
New York, N. Y.:

The Bureau is forwarding to you herewith Certificate of Nationality of the alien Niels Peter Clausen who is serving a sentence in the Maine State Prison, Thomaston, Maine, and whose sentence will expire early in December, 1925.

It is requested that you present this certificate to the Danish Consul in New York City for extension, advising [fol. 46] the Bureau and the Portland, Maine, office after extension has been made.

Harry E. Hull, Commissioner General.

PLC
Encl. 1568

Official copy furnished the District Director of Immigration, Portland, Maine, reference to his file No. 2525/30.

Harry E. Hull, Commissioner General.

Rubber stamps (2):

(Signed) Harry E. Hull Oct 29 1925 Mails & Files
(Signed) Harry E. Hull Oct 29 1925 Mails & Files

(Letterhead of U. S. Department of Labor.)

No. 2525/30

Office of District Director of Immigration, Portland, Me.

October 26, 1925.

Commissioner General of Immigration,
Washington, D. C.:

In reference to your file No. 55131/84 in the case of the alien Niels Peter Clausen who has been ordered deported at the expiration of his sentence I would respectfully request to be informed if the Bureau has been able to secure [fol. 47] an extension of his certificate of nationality as requested in my letter of Jan'y 30, 1925.

This alien's sentence expires early in December, 1925.

S. H. Howes, District Director of Immigration.

SHH/RAH

Rubber stamps (2): Recd. Bu. of Immigration Oct 27 1925. Mail and Files. Mail & Files Oct. (illegible) Out

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55131/84

February 17, 1925.

District Director of Immigration,
Portland, Maine:

Referring to your letter of January 30th, No. 2525/30, relative to Niels Peter Clausen, you are advised that the Second Assistant Secretary has granted authority under which this alien may reship foreign in lieu of deportation, if such action is practicable.

G. E. Tolman, Acting Commissioner General.

HMC
JWB.

Rubber stamp: G. E. Tolman (illegible) 27 1925 Mail and Files

(Letterhead of U. S. Department of Labor.)

98953/841

Office of Commissioner of Immigration, Ellis Island, New York, Harbor, N. Y.

Nov. 13, 1925.

Commissioner General of Immigration,
Washington, D. C.:

Certificate of Nationality forwarded with Bureau letter No. 55131/84 of the 29th ultimo is valid for deportation. The Portland, Maine, office is being advised that the alien Niels Peter Clausen may, therefore, be delivered at Ellis Island at any time after the expiration of his sentence.

For the Commissioner: W. W. Brown, Inspector in Charge, Law Division.

JK

Rubber stamps (4): Recd. Bu. of Immigration Nov. 14 1925. Mail and Files. Mail & Files Nov 24 1925 Out. Transp & (Illegible) Nov. 18, 1925. Filed Nov. 14, 1925.

[fol. 48] (Letterhead of U. S. Department of Labor.)

[fol. 49] U. S. Department of Labor, Immigration Service, District No. 2

Address all Correspondence to District Director of Immigration and refer to No. 2525/30.

Office of District Director of Immigration, Portland, Me.

Dec. 30, 1925.

Commissioner General of Immigration,
Washington, D. C.

I return herewith original warrant of arrest No. 55131/84 in the case of the alien Niels P. Clausen, who was delivered by this office at Ellis Island yesterday for deportation.

S. H. Howes, District Director.

Rubber stamps (2): Mail & Files Jan. 2 26 Out. Received Jan 1 1926 Deportation Division

[fol. 50] 55131/84

January 5, 1926.

Commissioner of Immigration,
Ellis Island, N. Y. H.:

In accordance with the request contained in your radiogram received the 2nd instant, the Bureau transmits herewith its file in the case of Niels Peterson Clausen alias Niels P. Clausen or Niels Peter Clausen, your file No. 98953/841, the same having been certified under the seal of the Department.

When the enclosed record has served its purpose, will you kindly return it to the Bureau?

G. E. Tolman, Assistant Commissioner-General.

REW
Incl. 38891. 55131/84. Incl. 38891.

January 5, 26.

—— —— file constituting the record of the Bureau of Immigration, Washington, D. C., in the case of Niels Peterson Clausen alias Niels P. Clausen or Niels Peter Clausen.

G. E. Tolman, Assistant Commissioner-General of Immigration. —— ——, Assistant Commissioner-General of Immigration. January 5th, twenty-six. Second Assistant.

REW

[fol. 51] Department of Labor
55131/84
Incl. 38891

Washington, January 5, 1926.

I hereby certify that the annexed is the original file constituting the record of the Bureau of Immigration, Washington, D. C., in the case of Niels Peterson Clausen alias Niels P. Clausen or Niels Peter Clausen.

G. E. Tolman, Assistant Commissioner-General of Immigration.

Office of the Secretary

I hereby certify that G. E. Tolman, who signed the foregoing certificate, is now, and was at the time of signing,

Assistant Commissioner-General of Immigration, and that full faith and credit should be given his certification as such.

In witness whereof, I have hereunto subscribed my name, and caused the seal of the Department of Labor to be affixed this 5th day of January, one thousand nine hundred and twenty-six.

(Signature Illegible), Second Assistant Secretary of Labor. (Seal.)

[fol. 52] IN UNITED STATES DISTRICT COURT

[Title omitted]

OPINION DISMISSING FORMER WRIT

I think the Statute of Limitations runs from the date of the last entry, U. S. vs. Uhl, 211 Fed., 628. It follows that the writ must be dismissed and relator remanded to custody of immigration authorities.

Dated, January 27, 1926.

F. A. W., U. S. D. J.

[fol. 53] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DISMISSING FORMER WRIT—Feb. 1, 1926

The petition and writ of habeas corpus for the release of the above named relator having come on to be heard before this Court on January 20th, 1926, and the respondent having filed a return to said petition and writ, and after hearing Silas B. Axtell, Esq., attorney for the relator, in support thereof, and Charles Lincoln Sylvester, Assistant United States Attorney, in opposition thereto, it is

Ordered that the said writ of habeas corpus be and the same hereby is dismissed, and the relator be and he hereby is remanded to the custody of the Commissioner of Immigration at the Port of New York.

F. A. Winslow, U. S. D. J.

[fol. 54] CITATION ON FORMER WRIT

By the Honorable Henry W. Goddard, one of the United States District Judges for the Southern District of New York, in the Second Circuit, to Henry C. Curran, Commissioner of Immigration, Greeting:

You are hereby cited and admonished to be and appear before a United States Circuit Court of Appeals for the Second Circuit, to be holden at the Borough of Manhattan, in the City of New York, in the district and circuit above named, on the 8th day of March, 1926, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Southern District of New York wherein United States of America, ex rel. Niels Peter Claussen, relator, is appellant, and you are respondent, to show cause, if any there be, why the order in said petition for appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 9th day of February, in the year of our Lord one thousand nine hundred and twenty-six, and of the independence of the United States the one hundred and fiftieth.

Henry W. Goddard, United States District Judge for the Southern District of New York, in the Second Circuit.

[fol. 55] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION AND ORDER ALLOWING APPEAL ON FORMER WRIT

To the Honorable Judges of the United States District Court for the Southern District of New York:

The above named petitioner, Niels Peter Claussen, feeling aggrieved by the order made and entered the 1st day of February, 1926, dismissing the writ of habeas corpus heretofore filed herein and remanding the relator to the custody of the Commissioner of Immigration at the Port

of New York, does hereby appeal from said order to the United States Circuit Court of Appeals for the Second Circuit, for the reasons specified in the assignment of errors filed herewith; and he prays that his appeal be allowed and citation be issued as provided by law, and that a transcript of the record and proceedings and documents [fol. 56] upon which the said order was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Second Circuit; and he further prays that a stay of deportation be granted pending the hearing and final determination of such appeal.

Dated, New York, February 8th, 1926.

Silas B. Axtell, Attorney for Relator, Office & P. O. Address, 11 Moore Street, New York City.

The foregoing appeal to the United States Circuit Court of Appeals for the Second Circuit, is allowed.

Dated, New York, February 9, 1926.

Henry W. Goddard, U. S. D. J.

[fol. 57] In United States District Court

[Title omitted]

Assignment of Errors on Former Writ

The petitioner, Niels Peter Claussen, for his assignment of errors herein respectfully alleges:

First. The Court erred in dismissing the writ of habeas corpus herein and the petitioner therefor and in remanding the relator to the custody of the Commissioner of Immigration.

Second. That the Court erred in holding that the relator was in a deportable class under Section 19 of the Immigration Act of February 5, 1917.

Third. That the Court erred in holding that the relator was in a deportable class of persons, and was a deportable person under the laws of the United States.

Fourth. That the Court erred in holding that the relator had been sentenced to imprisonment for one year or more because of conviction in this country for a crime involving [fol. 58] moral turpitude committed within five years after entry of the alien to the United States.

Fifth. That the Court erred in holding that the relator made entry to the United States on March 25, 1918, within the meaning of the immigration laws.

Sixth. That the Court erred in refusing to hold that the only entry to the United States which the relator had made, within the meaning of the immigration laws, was the entry which the relator made on or about January 22, 1912; and that thereafter the relator never departed from the jurisdiction of the United States within the meaning of the immigration laws and did not depart from the jurisdiction of the United States within the meaning of the immigration laws when he shipped as a seaman on the S. S. "Elisha Atkins," on or about October 19, 1917, at New York; and had not departed from the jurisdiction of the United States, within the meaning of such laws when he arrived back upon the said S. S. "Elisha Atkins" on March 25, 1918; and that on or about June 17, 1921, when the relator was convicted of the crime of manslaughter and sentenced to a term of imprisonment of not less than four years and six months and not more than six years, and when the said crime was committed, he had been continually within the jurisdiction of the United States, by reason of residence within the United States or service as a member of a crew of an American steamship, sailing from [fol. 59] American ports to foreign waters without discharge; and that when the said crime was committed and when the relator was convicted, as aforesaid, more than five years had expired since the relator's entry into the United States; and that accordingly, the relator was not within a deportable class under Section 19 of the Immigration Act of February 5, 1917, or under any provision of the Immigration laws of the United States; and that the writ of habeas corpus should be sustained and the relator discharged.

Seventh. That the Court erred in refusing to sustain the writ of habeas corpus and refusing to order that the relator be discharged.

Eighth. The Court erred in refusing to sustain the writ of habeas corpus and refusing to order that the relator be discharged.

Ninth. That the Court erred in diverse other respects appearing in the record.

And the petitioner prays that the order aforesaid may be reversed, and an order granted sustaining the writ of habeas corpus herein and discharging the relator.

Silas B. Axtell, Attorney for Petitioner, Office & P. O. Address, 11 Moore Street, New York City.

[fol. 60] In United States District Court

[Title omitted]

Order Fixing Bail on Former Writ

An application having been made to me for an order releasing the petitioner, Niels Peter Clausen, on bail pending the hearing and determination of the appeal heretofore taken by petition to the Circuit Court of Appeals for the Second Circuit from the order heretofore entered herein, dismissing the petitioner's writ of habeas corpus, and fixing the amount of bail; and the same having come on to be heard before me on the 23rd day of February, [fol. 61] 1926, and Charles A. Ellis having appeared in support of said application, and Charles L. Sylvester, Assistant United States Attorney, having appeared for the respondent, and having made no opposition thereto;

Now, therefore, on motion of Silas B. Axtell, attorney for the petitioner, it is

Ordered that bail of the petitioner be and the same hereby is fixed at $1,000 and, it is further

Ordered that the petitioner, Niels Peter Clausen be released from custody of the United States Commisioner of Immigration at the Port of New York on deposit of cash or bond duly approved by me for $1,000 bail, pending the hearing and determination of said appeal by the United States Circuit Court of Appeals.

Francis A. Winslow, U. S. D. J.

The foregoing order is hereby consented to.
Emory R. Buckner, Attorney for Respondent.

[fol. 62] In United States District Court

[Title omitted]

Stipulation as to Record on Former Writ

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of said District Court in the above entitled matter as agreed on by the parties.

Dated, May 13, 1926.

Silas B. Axtell, Attorney for Relator-Appellant, Office & P. O. Address, 11 Moore Street, New York City. Emory R. Buckner, U. S. Attorney, Attorney for Respondent-Appellee, New York City.

[fol. 63] In United States District Court

[Title omitted]

Clerk's Certification on Former Writ

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 19th day of May, in the year of our Lord one thousand nine hundred and twenty-six, and of the Independence of the United States, one hundred and fifty.

Alex. Gilchrist, Jr., Clerk. (Seal).

[fol. 64] In United States Circuit Court of Appeals, for the Second Circuit

United States of America ex rel. Niels Peter Claussen, Plaintiff-in-Error (Plaintiff below),

vs.

Hon. Henry C. Curran, Commissioner of Immigration, Defendant-in-Error, (Defendant below)

Before—Hough, Hand and Mack, Circuit Judges.

Emory R. Buckner, U. S. Attorney, attorney for appelle, Charles L. Sylvester, of counsel.

Silas B. Axtell, attorney for appellant, Charles A. Ellis, of counsel.

Opinion of Circuit Judge Mack

Mack, C. J.:

The question before us is the meaning of the word "entry" in section 19, of the Immigration Act of February 5, 1917, which provides that

"any alien who is sentenced to imprisonment for a term of one year or more because of conviction of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States,—shall, upon [fol. 65] the warrant of the Secretary of Labor, be taken into custody and deported."

If relator's entry was an asserted by the government in 1918, he was deportable; if in 1912, he was not deportable.

The facts are undisputed. Claussen, a Danish subject, first entered this country in 1912 as a member of a crew of a British ship. He landed at Norfolk, Va. The next day he shipped on an American schooner, and except for short periods on shore, he sailed on American vessels up to the time of his conviction in June, 1921, for manslaughter committed May, 1921. He took out his first papers for naturalization in June, 1919. His last foreign cruise was as a member of the crew of an American schooner; he signed on for this in New York in October, 1917, and arrived back

and signed off in Boston in March, 1918. During the voyage the schooner had landed at several foreign ports. Thereafter he made a few cruises in coastwise trade, and resided for a time on land in the United States.

The exact question is whether his return on the American schooner from the foreign cruise for which he had shipped from the United States is to be deemed an entry into the United States, within the above quoted section 19 of the Act.

The common statement which was the basis for the decisions in the Chinese Laborer, 13 Fed., 291, and Chinese Cabin Waiter, 13 Fed., 286, that an American vessel is to be deemed American soil, is but a fiction and is not of universal application (Sharrenberg vs. Dollar S. S. Co., 245 U. S., 122, Cunard S. S. Co. vs. Mellon, 262 U. S., 100). [fol. 66] Clearly he was not in the United States during the voyage; equally clearly he entered the United States in March, 1918.

The question before us is neither, as in Weedin vs. Baso Okada, 2 Fed., 2nd, 321, C. C. A., 9, whether within other sections of the Act that entry was legal or illegal, nor as in petition of Herevik, 1 Fed., 2nd, 449 (D. C., S. D., Cal.), whether by making such a voyage he lost any rights given under other sections of the Act to return to the United States. See too ex parte Nagata, 11 Fed., 2nd, 178 (D. C., S. D., Cal.).

We are concerned only with the meaning of the word in connection with the deportation provision for the commission of crime, and under that section in our judgment the word should be given the broadest interpretation.

The Weedin case contrasting R. S. 5363 and Section 8 of the Immigration Act, presented a real difficulty to the Court that had to determine the legality of illegality of entry; under the former provision the master of a vessel is criminally liable for refusing to bring his seaman, whom he has carried out, home again, whereas under the latter provision, the master who brings an alien not lawfully entitled to enter or to reside within the country is likewise criminally liable.

In the present case we are not, however, concerned with reconcilement of these two provisions, for even if relator

was lawfully entitled, as held in the Weedin case, to enter the United States in 1918, his action in coming into the country was nonetheless an entry because it was a lawful [fol. 67] entry, and it would be nonetheless if he had established a definite residence within the country. Logically it follows that one who crosses the international bridge at Niagara Falls to Canada and after reviewing the Falls from the Canadian side, returns to this country, does enter the country, and if he be an alien and thereafter within five years is convicted of a crime involving moral turpitude, he would be deportable under the section here involved.

The fact that the relator took out naturalization papers in 1919 and therefore under the naturalization laws would "for all purposes of protection as an American citizen be deemed such" does not aid him here. No question of protection as an American citizen is involved. The view that because an alien seaman on an American vessel is regarded as an American seaman in the sense that he is under the protection and subject to the laws of the United States in re Ross, 140 U. S., 453, was held in U. S. vs. New York S. S. Co., 269 U. S., 304, to have no application to the question whether such seamen come within the terms of a special statute dealing specifically with "alien seamen as such." It was there held that for the purpose of the act then under consideration alien seamen meant seamen who are aliens and not seamen on foreign vessels.

The order must be affirmed.

[fol. 68] In United States Circuit Court of Appeals

[Title omitted]

Dissenting Opinion of Circuit Judge Hand

Hand, Circuit Judge (dissenting): It seems to me that there is a strong reason to distinguish the return of a seaman at the end of a voyage for which he has signed the articles and on the same ship on which he left, from a reentry one has not bound oneself to make when one went away. A seaman is bound for the voyage once he signs on; desertion is at least a civil wrong. To say that every

coasting vessel or fishing smack which passes the league limit subjects all aliens on board to all conditions of admission into the United States, including, I should suppose, the Quota Law, seems to me an impracticable interpretation of the law, yet I can see no escape from it if my brothers are right. It seems that American crews must be made up of citizens and citizens only. That I should have thought was the opposite of the plain intention of Congress as respects our mercantile marine.

[fol. 69] Nor can I see that we can escape considering the conflicts which our ruling raises with other statutes because they are not before us here. I can see no answer to the dilemma put by Rudkin, J., in Weedin vs. Banzo Okada, 2 Fed. (2nd), 321 (C. C. A., 9), and that case is flat for the relator at bar. I agree that Chinese Cabin Waiter, 13 Fed. Rep., 286, and Chinese Laborers on Shipboard, 13 Fed. Rep., 291, arose under other statutes, but for all that if there is any principle in the matter at all they too are in point. While I set no store upon the doctrine of an American ship as American soil, I do think that we should not apply this statute literally, but rather with an eye to the purposes for which it was intended.

I vote to reverse.

[fol. 70] In United States Circuit Court of Appeals

[Title omitted]

Mandate—Dec. 13, 1926

Error to the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

[fol. 71] On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed.

It is further ordered that a mandate issue to the said District Court in accordance with this decree.

C. M. H., J. W. M.

In United States Circuit Court of Appeals

Clerk's Certificate

United States of America,
Southern District of New York, ss.

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 60, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of United States ex rel. Niels Peter Claussen, Plaintiff-in-Error, against Henry H. Curran, as Commissioner, etc., Defendant-in-error, as the same remains of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 28th day of December, in the year of our Lord one [fol. 72] thousand nine hundred and twenty-six and of the Independence of the said United States the one hundred and fifty-first.

Wm. Parkin, Clerk. (Seal)

Decision of U. S. Supreme Court Abating Appeal

No. 166. The United States of America ex rel. Niels Peter Claussen, Petitioner, vs. Honorable Henry H. Curran, Commissioner of Immigration. On writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit. Per curiam: In this case the order of the District Court dismissing the writ of habeas corpus was entered on February 1, 1926; an appeal was allowed on February 9, 1926, to the Circuit Court of Appeals for the Second Circuit, which court, on December 14, 1926, entered a judgment affirming that of the District Court. A writ of certiorari was granted by this court on March 7, 1927.

It appearing that Henry H. Curran, sued herein as Commissioner of Immigration, resigned such office on March 31st, 1926, and was succeeded by Benjamin M. Day, who now holds that office and that no motion was made under

Section 11 of the Act of February 13, 1925 (c. 229, 43 Stat., 936, 941), asking the Court to "permit the cause to be continued and maintained by or against the successor in office of such officer," and that the six months' period, within which such a motion could have been made, has expired, the Court now vacates the judgments entered in the District Court and in the Circuit Court of Appeals and remands the cause to the District Court with a direction to dismiss the cause as abated.

[fol. 73] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ABATING CASE

This cause having heretofore come on for hearing in this Court and an order having been entered in the Office of the Clerk of this Court dismissing the writ of habeas corpus obtained by the relator and remanding him to the custody of the United States Commissioner of Immigration, at the Port of New York, and the relator having thereafter obtained a transcript of the record to be brought into the United States Court of Appeals for the Second Circuit and the said Circuit Court of Appeals having transmitted to this Court its mandate by which it appears that at the October, 1926, Term of the said Court, on consideration of the said transcript of record and argument by counsel, the said Circuit Court of Appeals for the Second Circuit adjudged and decreed that the order of the said District Court be affirmed;

Whereupon, by writ of certiorari, the relator herein obtained a transcript of the record to be brought into the [fol. 74] Supreme Court of the United States and the said Supreme Court of the United States having transmitted to this Court its mandate by which it appears that at the October Term, 1927, thereof, this cause came on to be heard on the said transcript of record and on motion to abate which was argued by counsel, on consideration whereof it was ordered and adjudged by the said Supreme Court of the United States that the judgments of the said Circuit Court of Appeals and of the District Court of the United

States for the Southern District of New York in this cause be and the same are hereby vacated with further direction to dismiss the cause as abated.

Now, on motion of Charles H. Tuttle, United States Attorney for the Southern District of New York, attorney for the respondent herein, it is

Ordered, adjudged and decreed that the mandate of the said Supreme Court of the United States in this cause be and the same hereby is made the judgment of this Court and said cause is dismissed; and it is further

Ordered, adjudged and decreed that the relator herein, Niels Peter Claussen, surrender himself to the Commissioner of Immigration at the Port of New York on or before the 30th day of April, 1928, to be dealt with in conformity with law, and upon default thereof the bond given for the release of the alien will be declared forfeited.

Dated, New York, N. Y., March 19, 1928.

T. D. Thatcher, United States District Judge.

[fol. 75] In United States District Court, Southern District of New York

M 12-40

United States ex rel. Niels Peter Claussen, Realtor,

vs.

Benjamin M. Day, Commissioner of Immigration at the Port of New York, Respondent

Return to Writ of Habeas Corpus

Southern District of New York, ss:

Joseph Savorett, being duly sworn, says that he is and during all the times herein mentioned has been a clerk in the service of the United States; that he is attached to the Law Department of the Immigration Service of the United States at Ellis Island, New York; that he in his official capacity is authorized to make and in behalf of the respondent hereby makes the following return to the writ of habeas corpus herein.

In compliance with the direction of this Court, the body of the said alien in his own proper person was produced herewith before this Court at the time specified in the writ.

It is respectfully urged that upon its face the petition upon which the writ was granted is insufficient in law, and that the writ should therefore be squashed because

[fol. 76] (a) The petition does not allege facts to show that the proceedings of the Department of Labor upon which was issued the warrant of deportation pursuant to which the said alien held, were not regular, fair and in compliance with the statute applicable in such cases, nor facts from which this Court can determine that the proceedings were either irregular, unfair or not in compliance with said statute;

(b) The petition does not allege any facts which entitled this Court to review the findings and conclusion of the Department of Labor upon which the warrant of deportation was issued;

(c) It is not alleged that there was no evidence before the Department of Labor upon which it based or could have based its finding and conclusion in accordance with which the warrant of deportation was issued;

(d) It does not appear by allegation of facts that the issues sought by the petition now to be litigated in this Court have not already been determined by the Department of Labor adversely to the said alien in proceedings which were regular, fair and in compliance with the statute applicable thereto.

As appears by the records of the Department of Labor of the United States with respect to the above named alien, copies of which are produced and filed herewith as part of this return;

1. The printed record attached to the original petition contains all of the facts in this matter. We hereby respectfully refer to said record and make it a part hereof as [fol. 77] if it were hereto attached. On the basis of the same, this writ of habeas corpus should be dismissed.

2. As appears from the record the alien was duly informed and apprised of the charges against him. He was

afforded a full, complete and fair hearing by the Department of Labor upon the said charges and was afforded a full, complete and fair opportunity to answer and submit evidence upon such charges. There was evidence before the Department of Labor sufficient to sustain the said charges. The Department of Labor duly found that the charges were sustained, that they were in fact fully sustained by the proofs that were before and were considered by the Department of Labor. In any event, it cannot be said on the record herein the Department of Labor abused the discretion vested in it by Congress and its determination was final and conclusive.

3. Deponent denies any knowledge or information sufficient to form a belief as to the truth of the allegations of the relator's petition, except as to the allegations heretofore expressly admitted.

Wherefore, deponent prays that the writ of habeas corpus herein be dismissed and the said alien be remanded to the custody of the Commissioner of Immigration at Ellis Island, New York.

Joseph Savorett.

Sworn to before me this 3d day of May, 1928.
Armand Chankalian, Notary Public.

N. Y. County Clerk's No. 307, Reg. No. 9163.
Commission expires March 30, 1929.

[fol. 78] In United States District Court

[Title omitted]

Order Dismissing Writ of Habeas Corpus—May 4, 1928

The writ of habeas corpus, the petition and all the papers annexed thereto, for the release of the above named relator having come on to be heard before this Court on May 4th, 1928, and the respondent having filed a return to said petition and writ, and after hearing Silas B. Axtell, Esq., attorney for the relator, in support thereof, and Edward

Feldman, Assistant United States Attorney, in opposition thereto, it is

Ordered, that the said writ of habeas corpus be and the same hereby is dismissed, and the relator be and he hereby is remanded to the custody of the Commissioner of Immigration, at the Port of New York.

T. D. Thatcher, U. S. D. J.

[fol. 79] In United States District Court

[Title omitted]

Assignment of Errors

The petitioner, Niels Peter Claussen, for his assignment of errors herein respectfully alleges:

First. The Court erred in dismissing the writ of habeas corpus herein and the petition therefor and in remanding the relator to the custody of the Commissioner of Immigration.

Second. That the Court erred in holding that the relator was in a deportable class under Section 19 of the Immigration Act of February 5, 1917.

Third. That the Court erred in holding that the relator was in a deportable class of persons, and was a deportable person under the laws of the United States.

Fourth. That the Court erred in holding that the relator had been sentenced to imprisonment for one year or more because of conviction in this country for a crime involving [fol. 80] moral turpitude committed within five years after entry of the alien to the United States.

Fifth. That the Court erred in holding that the relator made entry to the United States on March 25, 1918, within the meaning of the immigration laws.

Sixth. That the Court erred in refusing to hold that the only entry to the United States which the relator had made, within the meaning of the immigration laws, was the entry

which the relator made on or about January 22, 1912; and that thereafter the relator never departed from the jurisdiction of the United States within the meaning of the immigration laws and did not depart from the jurisdiction of the United States within the meaning of the immigration laws when he shipped as a seaman on the S. S. "Elisha Atkins," on or about October 19, 1917, at New York; and had not departed from the jurisdiction of the United States within the meaning of such laws when he arrived back upon the said S. S. "Elisha Atkins" on March 25, 1918; and that on or about June 17, 1921, when the relator was convicted of the crime of manslaughter and sentenced to a term of imprisonment of not less than four years and six months and not more than six years, and when the said crime was committed, he had been continually within the jurisdiction of the United States, by reason of residence within the United States or service as a member of a crew of an American steamship, sailing from American ports to foreign waters and return without discharge; and that [fol. 81] when the said crime was committed and when the relator was convicted, as aforesaid, more than five years had expired since the relator's entry into the United States; and that accordingly, the relator was not within a deportable class under Section 19 of the Immigration Act of February 5, 1917, or under any provision of the immigration laws of the United States; and that the writ of habeas corpus should be sustained and the relator discharged.

Seventh. That the Court erred in refusing to sustain the writ of habeas corpus and refusing to order that the relator be discharged.

Eighth. That the Court erred in refusing to sustain the writ of habeas corpus refusing to order that the relator be discharged.

Ninth. That the Court erred in diverse other respects appearing in the record.

Tenth. That the Court erred in holding that the decision rendered on the previous application for a writ of habeas corpus, by the United States District Court for the Southern District of New York and the United States Circuit Court of Appeals for the Second Circuit, was binding and governed this application.

Eleventh. That the Court erred in refusing to hold that the order of the United States Supreme Court and the judgment entered thereon, was effective to vacate and render null and void the orders and judgment of the United States District Court for the Southern District of New York and the United States Circuit Court of Appeals for [fol. 82] the Second Circuit rendered upon the previous application leaving the question within the jurisdiction of the District Court and in dismissing the writ of habeas corpus.

And the petitioner prays that the order aforesaid may be reversed, and an order granted sustaining the writ of habeas corpus herein and discharging the relator.

Silas B. Axtell, Attorney for Petitioner, Office & P. O. Address, 11 Moore Street, New York City.

[fol. 83] In United States District Court

[Title omitted]

To the Honorable Judges of the United States District Court for the Southern District of New York:

The above-mentioned petitioner, Niels Peter Claussen, feeling aggrieved by the order made and entered the 4th day of May, 1928, dismissing the writ of habeas corpus heretofore filed herein and remanding the relator to the custody of the Commissioner of Immigration at the Port of New York, does hereby appeal from said order to the United States Circuit Court of Appeals for the Second Circuit, for the reasons specified in the assignment of errors filed herewith; and he prays that his appeal be allowed and citation be issued as provided by law, and that a transcript of the record and proceedings and documents upon which the said order was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Sec- [fol. 84] ond Circuit; and he further prays that a stay of deportation be granted pending the hearing and final determination of such appeal.

Dated, New York, May 4th, 1928.

Silas B. Axtell, Attorney for Relator, Office & P. O. Address, 11 Moore Street, New York City.

The foregoing appeal to the United States Circuit Court of Appeals for the Second Circuit, is allowed.

Dated, New York, May 4, 1928.

T. D. Thatcher, U. S. D. J.

[fol. 85] Citation in usual form omitted in printing.

[fol. 86] In United States District Court

[Title omitted]

Notice of Appeal

Please take notice, that the relator and petitioner, Niels Peter Claussen, hereby appeals to the United States Circuit Court of Appeals for the Second Circuit, from the final order of this Court entered herein in the office of the Clerk of the Southern District of New York on or about May 5th, 1928, dismissing the writ of habeas corpus herein and said relator and petitioner hereby appeals from each and every part of said order as well as from the whole thereof.

Dated, New York, May 5th, 1928.

Yours, etc.,
Silas B. Axtell, Attorney for Relator, Office & P. O. Address, 11 Moore Street, New York City.

To Charles H. Tuttle, U. S. Attorney. Edgar G. Wandless, of Counsel, Attorneys for Respondent, 45 Broadway, New York City.

[fol. 87] In United States District Court

[Title omitted]

Order Fixing Bail—May 4, 1928

An application having been made to me for an order releasing the petitioner, Niels Peter Claussen, bail pending the hearing and determination of the appeal heretofore taken by the petitioner to the Circuit Court of Appeals for the Second Circuit from the order heretofore entered herein dismissing the petitioner's writ of habeas corpus and fixing the amount of bail, and the same having come on to be heard

before me, and upon reading and filing the annexed affidavit of Silas B. Axtell, duly sworn to the 30th day of April, [fol. 88] 1928, and the annexed consent of the respective parties and the surety company, and Silas B. Axtell, having appeared in support of said application and Edward Feldman, Assistant United States Attorney having appeared for the respondent, and having made no opposition thereto, it is

Now, on motion of Silas B. Axtell, attorney for petitioner,

Ordered that the bail of the petitioner be and the same hereby is fixed at $1,000 and bond number 9831 which has been duly filed by the Independence Indemnity Company may be amended and substituted in this proceeding, and the said bond shall stand with full force and effect, and it is further

Ordered that the petitioner, Niels Peter Claussen, be released from the custody of the United States Commissioner of Immigration of the Port of New York, pending the hearing and determination of said appeal by the United States Circuit Court of Appeals.

T. D. Thatcher, U. S. D. J.

We hereby stipulate, consent and agree to the entry of the foregoing order.

Charles H. Tuttle, Attorney for Respondent. Independence Indemnity Co., Surety, By J. A. Aschutti, Attorney-in-fact.

[fol. 89] In United States District Court

[Title omitted]

Stipulation as to Record

It is hereby stipulated and agreed that the foregoing is a true transcript of said District Court in the above entitled matter as agreed on by the parties.

Dated, May 17, 1928.

Silas B. Axtell, Attorney for Relator-Appellant, Office & P. O. Address, 11 Moore Street, New York City. Charles H Tuttle, Attorney for Respondent-Appellee, New York City.

[fol. 90] Clerk's certificate to foregoing transcript omitted in printing.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

M 12—40

UNITED STATES ex Rel. NIELS PETER CLAUSSEN, Relator,

vs.

BENJAMIN M. DAY, Commissioner of Immigration at the Port of New York, Respondent

SIRS: Please take notice that upon the annexed affidavit of Lucien V. Axtell, duly sworn to the 29th day of May, 1928, and upon all the facts and proceedings heretofore had herein; a motion will be made at a Term of this Court to be held at the United States Court House and Post Office Building, in the Borough of Manhattan, City and State of New York on the 4th day of June, 1928, at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel may be heard for an order permitting this cause to be added to the General Calendar so that it may be argued before the close of the October 1927 Term, and that such other and further relief as to the Court may seem just and proper.

Dated New York, May 29th, 1928.

Yours, etc., Silas B. Axtell, Attorney for Relator. Office & P. O. address: 11 Moore Street, New York City.

To Charles H. Tuttle, U. S. Atty., Attorney for Respondent, Post Office Building, New York City.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES ex Rel. NIELS PETER CLAUSSEN, Relator,

vs.

BENJAMIN M. DAY, Commissioner of Immigration at the Port of New York, Respondent

STATE OF NEW YORK,
City and County of New York, ss:

Lucien V. Axtell, being duly sworn deposes and says; that he is an attorney at law in the office of Silas B. Axtell,

the attorney for the relator in the above entitled action, and is familiar with all the facts and proceedings hereinbefore had herein.

Your deponent makes this affidavit to support a prayer for leave to have this case added to the calendar for the October, 1927 Term. This is an appeal by the relator on a writ of habeas corpus from an order of the United States District Court for the Southern District of New York, dismissing the petitioner's writ of habeas corpus.

The petition in support of the writ, alleges among other things that the writ of habeas corpus was allowed by the Honorable John C. Knox on December 31st, 1925, and was dismissed by Honorable Francis A. Winslow on January 27th, 1926. That the petitioner thereupon took an appeal to the Court and was argued before Honorable Hough, Hand and Mack, Circuit Judges, and on or about December 13th, 1926, the Court rendered a decision, by a divided court, voting two to one, affirming the said order of the District Court. A majority opinion was written by the Honorable Julian W. Mack, United States Circuit Judge, and a dissenting opinion was written by the Honorable Leonard Hand.

The petition further alleges that on March 7th, 1927, a writ of certiorari was granted by the Supreme Court of the United States to review the case. At the time when the original petition for writ of habeas corpus was filed and the writ first allowed by the District Court as aforesaid, the writ was directed to Honorable Henry H. Curran, the then Commissioner of Immigration.

On January 9th, 1928, a suggestion of abatement was filed by the Supreme Court, by the United States Solicitor General, wherein it was pointed out that the relator had failed to make a motion to substitute Benjamin M. Day, as respondent, who had succeeded Henry H. Curran on March 31st, 1926, within the six months required by Statute, in order that the cause could be continued. The Supreme Court thereupon vacated the judgments entered in the District Court and the Circuit Court of Appeals and remanded the cause to the District Court with the direction to dismiss it as abated. Pursuant to such direction, an order was accordingly entered, dismissing the cause as abated on March 19th, 1928.

Thereafter, on April 30th, 1928, the relator was again taken into custody by the order of the Commissioner, Benjamin M. Day, and on May 1st, 1928, a second writ of habeas corpus was granted and dismissed on May 4th, but the relator was released pending the appeal, upon the filing of a bond in the sum of $1,000.00. On May 5th, an appeal was taken and the record on appeal filed on May 17th, 1928. The same questions are raised herein, as were brought before the Court on the first hearing on December 13th, 1926, except that the succeeding events had been added to it.

Your deponent being of the opinion that this Court will follow its previous decision, and being desirous of again petitioning the Supreme Court, asks that this appeal be added to the General Calendar for immediate disposition.

Your deponent has also learned that the case of Rios v. Commissioner Benjamin M. Day, is now pending before the Supreme Court of the United States, upon a petition for a writ of certiorari, upon a decision of this Court of March 8th, 1928, which involves similar issues. Your deponent is desirous of having this appeal argued and determined with that case in the Supreme Court of the United States.

Wherefore, your deponent respectfully prays that the Court will permit this cause to be added to the General Calendar so that it may be argued before the close of this Term, and that such other and further relief as to this Honorable Court may seem just and proper, be granted.

Lucien V. Axtell.

Sworn to before me this 29 day of May, 1928. Edith McCormick, Notary Public. (Seal.)

[Endorsed:] United States Circuit Court of Appeals for the Second Circuit. United States ex Rel. Niels Peter Clausen, Relator, against Benjamin M. Day, Commissioner of Immigration at the Port of New York, Respondent. Affidavit. Silas B. Axtell, Attorney for Relator, 11 Moore Street, New York City. A copy of the within order has been this day received at this office, May 29, 1928. Charles H. Tuttle, U. S. Attorney.

United States Circuit Court of Appeals for the Second Circuit

United States ex Rel. Niels Peter Claussen, Relator-Appellant,

vs.

Benjamin M. Day, Commissioner of Immigration at the Port of New York, Respondent-Appellee

Sirs: Please take notice that the relator-appellant, United States ex Rel. Niels Peter Claussen, hereby consents that the appeal herein be affirmed by the Court pro forma i. e., without argument, and without the filing of briefs, and

Please take notice that this notice is supplement to the motion submitted to the Court on the 4th day of June, 1928.

Dated New York, June 4th, 1928.

Yours, etc., Silas B. Axtell, Attorney for Relator-Appellant. Office & P. O. address: 11 Moore Street, New York City.

To Charles H. Tuttle, U. S. Atty., Attorney for Respondent-Appellee, Post Office Building, New York City.

United States Circuit Court of Appeals, Second Circuit

At a stated term of the United States Circuit Court of Appeals in and for the Second Circuit, held at the court-rooms, in the Post Office building, in the city of New York, on the 12th day of June, one thousand nine hundred and twenty-eight.

Present: Hon. Martin T. Manton, Hon. Learned Hand, Hon. Thomas W. Swan, Circuit Judges.

United States ex Rel. Niels Peter Claussen, Relator-Appellant,

v.

Benjamin M. Day, as Commissioner, etc., Respondent-Appellee

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be, and it hereby is, affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

M. T. M., L. H.

[Endorsed:] United States Circuit Court of Appeals, Second Circuit. United States ex rel. Niels Peter Claussen v. Benjamin M. Day, as Comm'r. Order for mandate. United States Circuit Court of Appeals, Second Circuit. Filed June 12, 1928. William Parkin, Clerk.

United States Circuit Court of Appeals, Southern District of New York

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 96, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of United States ex rel. Niels Peter Claussen, Relator-Appellant, against Benjamin M. Day, as Commissioner, etc., Respondent-Appellee, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 26th day of June, in the year of our Lord one thousand nine hundred and twenty-eight, and of the Independence of the said United States the one hundred and fifty-second.

Wm. Parkin, Clerk. (Seal United States Circuit Court of Appeals, Second Circuit.)

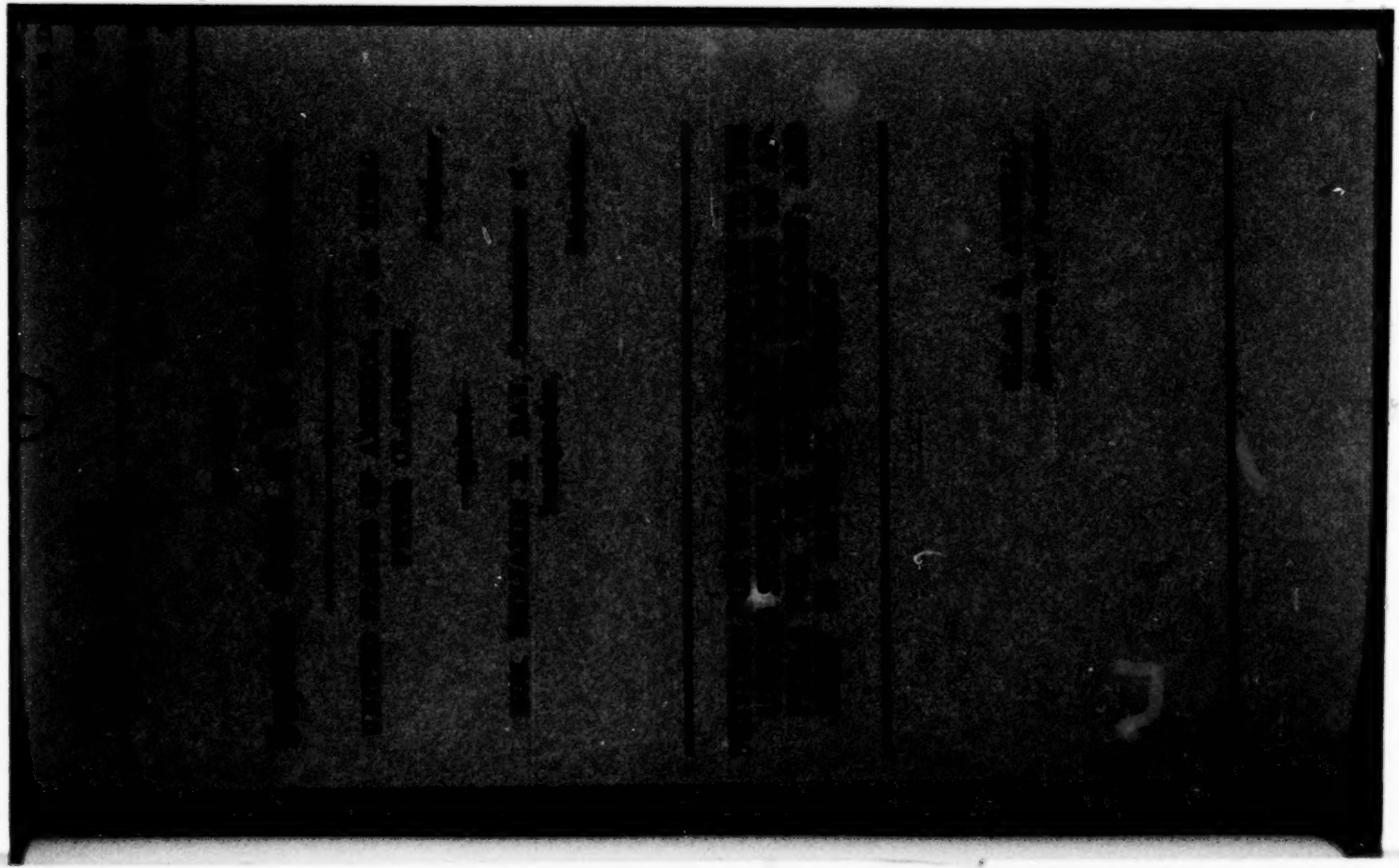
[fol. 99] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed October 22, 1928

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 33,725. U. S. Circuit Court of Appeals, Second Circuit. Term No. 416. The United States of America, ex rel. Niels Peter Claussen, vs. Hon. Benjamin M. Day, Commissioner of Immigration. Petition for writ of certiorari and exhibit thereto. Filed September 6th, 1928. File No. 33,725.



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IN THE

Supreme Court of the United States.

UNITED STATES OF AMERICA, *ex rel.* NIELS PETER CLAUSSEN,

Petitioner,

—against—

HON. BENJAMIN M. DAY, Commissioner of Immigration,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Niels Peter Claussen respectfully prays for a writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the Second Circuit, in the above entitled case.

The petition presents the same facts which led this Court to grant a writ of certiorari to this petitioner on March 7, 1927, to review a judgment dismissing an earlier writ of habeas corpus obtained against Commissioner of Immigration Henry H. Curran. After Mr. Curran resigned and was succeeded as Commissioner by the present incumbent Benjamin M. Day, the writ against Mr. Curran was by this Court directed to be dismissed as abated, on January 9, 1928, after the Court vacated the judgments of the District Court and the Circuit Court of Appeals

Statement of the Case.

The facts are undisputed. The petitioner, Niels Peter Claussen, is a native and subject of Denmark, having been born in Fiskbek, Denmark, on August 28, 1875 (R. 33, 36). He first entered this country on or about January 22, 1912, coming as a member of the crew of a British ship, and landing at Norfolk, Va. The next day he shipped on an American schooner, and, with the exception of short periods on shore in the United States, had sailed under the American flag ever since, up to the time of his conviction hereafter referred to. He received first naturalization papers in New York June 6, 1919 (R. 34). The last cruise the petitioner made into foreign waters was as a member of the crew of the American schooner "Elisha Atkins", signing on in New York October 19, 1917, and arriving back and signing off in Boston March 25, 1918 (R. 5, 34, 29-30). Thereafter, he made a few cruises in coastwise trade, and resided for a time on land as an agent of a seamen's labor union.

On June 17, 1921, petitioner was sentenced in the Cumberland County Court, Portland, Maine, for the crime of manslaughter, for the killing of one James Walker on May 21, 1921, in Portland. The sentence was after a plea of guilty by advice of counsel, and was for a maximum term of six years and the minimum term of four years and six months. The petitioner became eligible for parol in December, 1925.

On November 3, 1921, on a Department warrant, dated September 14, 1921, petitioner was technically taken into custody at the prison by immigration authorities, and a hearing conducted before an immigration

inspector, and petitioner was recommended to be deported at the expiration of his sentence in December, 1925.

On November 7, 1921, the record of the hearing was reviewed by the Inspector in Charge, S. H. Howes, who concurred in the findings and recommended deportation.

On November 19, 1921, a record of the hearing was reviewed by the Department of Labor, the findings of the examining inspector were affirmed, and the petitioner directed to be deported. A warrant for his deportation upon expiration of sentence was issued November 19, 1921.

The only ground upon which the recommendations of the examining inspector and the Inspector in Charge and the warrant of the Department of Labor were based, was a finding by such officials that the petitioner was convicted in this country of a crime involving moral turpitude committed, it was claimed, within five years after his entry into the United States, and the crime specified was that of manslaughter in connection with the killing of James Walker on May 21, 1921.

The only arrival of the petitioner at a port of the United Stataes, cited as an entry into the United States, within five years preceding the adjudged crime, was the alleged "entry" of petitioner at Boston on March 25, 1918, when he landed there from the American schooner "Elisha Atkins" after a voyage as a member of the crew thereof. The so-called "Certificate of Admission", dated August 31, 1921, itself shows that the petitioner signed on the "Elisha Atkins" as mate at New York on October 19, 1917, and arrived back in Boston as mate on board said vessel on March 25, 1918. In the hearing before the examining inspector it was shown that on that voyage the "Elisha Atkins" went from New York

to Para, South America, and back to the United States by way of Cienfuegos, Cuba.

In his official review of the case, it was recognized by Inspector in Charge Howes that:

> "It appears that he first arrived in the U. S. some 9 years ago, and since that time has sailed continuously under the American flag, up to the time of his conviction" (R. 36-37).

Although petitioner landed from the "Elisha Atkins" on March 25, 1918, it is to be noted that the so-called "Certificate of Admission" made out by Commissioner Skeffington, apparently as an afterthought to give such landing the coloring of an original "entry", preliminary to deportation proceedings, bears date of August 31, 1921—*over two years and five months after the landing on March 25, 1918; over two months after the sentence for the crime on June 17, 1921;* and over a month after an official report of the conviction to the immigration inspector in charge, dated June 27, 1921 (R. 29-30). This so-called "Certificate of Admission" obviously was not a *bona fide* certificate of admission of an alien from abroad issued concurrent with his landing, but obviously was "trumped up" over two years later to afford a colorable basis for the Department warrant, dated fourteen days later, September 14, 1921, and the hearing under date of November 3, 1921. Indeed, it should be noted that, by a slight alteration of the printed form, the certificate is made, not a *"certificate of 'admission'"* at all, but a certification of *"arrival"*. A printed reproduction of the certificate appears on pages 29 and 30 of the record. The original certificate attached to the original return shows that in item 3 of the certificate, the word "admitted" was

stricken out, and the word "arrived" typewritten above it, so that the item on the printed form which had read

"(3) Port at which admitted",

was changed to read

"(3) Port at which arrived".

Proceedings.

The writ of habeas corpus here involved is the second obtained on behalf of this petitioner. An earlier writ was allowed by Hon. John C. Knox, United States District Judge, on December 31, 1925, on petition of Chris Rasmussen, a friend of petitioner. That writ was argued before Hon. Francis A. Winslow, United States District Judge, who rendered an opinion dismissing the writ and remanding petitioner on January 27, 1926. An order was entered thereon February 1 ,1926. Petitioner thereupon filed a petition for appeal February 8, 1926, and the appeal was allowed by Hon. Henry W. Goddard, United States District Judge. On that appeal the Circuit Court of Appeals for the Second Circuit affirmed the decision of the District Court by a two to one majority, Judges Hough and Mack concurring in a majority opinion of affirmance written by Judge Mack, and Hon. Learned Hand writing a dissenting opinion (see R. 64-69). Mandate issued December 13, 1926. A writ of certiorari was granted by this Court March 7, 1927. On January 9, 1928, on a suggestion of abatement filed by the Solicitor General, this Court rendered a *per curiam* decision vacating the judgments of the District Court and Circuit Court of Appeals and dismissing the cause as abated, on the ground that under the Act of

February 13, 1925, §11, the cause against Mr. Curran had abated due to the failure, after his resignation as Commissioner, to substitute the new Commissioner of Immigration, Benjamin M. Day, within six months. A judgment to this effect was entered in the District Court March 19, 1928.

Thereafter petitioner surrendered to the custody of the Commissioner of Immigration, Benjamin M. Day, and was held for deportation. Petitioner thereupon executed the present petition for a writ of habeas corpus, showing all the facts; and the writ was allowed by Hon. T. D. Thatcher, United States District Judge, on May 1, 1928. On May 4, 1928, the writ was argued before Judge Thatcher, who dismissed the writ and remanded the petitioner to the custody of the Commissioner of Immigration (R. 78). On petition filed by petitioner, an appeal to the Circuit Court of Appeals for the Second Circuit was allowed on May 4, 1928 (R. 83-84). In addition, a notice of appeal was filed by petitioner (R. 86). On May 4, 1928, an order was signed by Judge Thatcher releasing petitioner in $1,000 bail. On June 4, 1928, petitioner made a motion before the Circuit Court of Appeals for an order advancing the cause on the Calendar to be heard before the close of the October, 1927, Term; and on the Court being advised that the appeal presented the same facts which had been presented on the appeal from the earlier judgment dismissing the previous writ, the Court, consisting of Judges Manton, Learned Hand and Swan, heard the cause and, on consent of counsel for both parties, rendered judgment *pro forma*, affirming the order of the District Court. Mandate issued June 12, 1928.

Question Presented.

Section 19 of the Immigration Act of February 5th, 1917, U. S. Code, Tit. 8, §155, provides:

> "Any alien who, after February 5, 1917, is sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, *committed within five years after the entry of the alien to the United States,* • • • shall, upon the warrant of the Secretary of Labor, be taken into custody and deported."

It will be seen, therefore, that the only question presented on this appeal is whether, when Claussen shipped out of New York on the American schooner "Elisha Atkins" on October 19th, 1917, for a round-trip continuous voyage, as a member of the crew, to South American and Cuban ports *and return*, he departed from the United States, within the meaning of the Immigration Laws, with such effect that his arrival back in the United States, as a member of such crew, and landing at Boston, at the end of such voyage, on March 25th, 1918, constitutes a new entry into the United States within the meaning of the Immigration Laws, such as will toll the five-year period within which the crime, of which he was convicted, must have been committed in order to warrant deportation.

Reasons for the Petition.

The reasons for which the petition is presented are:

(1) That the Circuit Court of Appeals has decided an important question of Federal Law, which has not been,

but should be, settled by this Court, and has decided a Federal question in a way probably in conflict with applicable decisions of this Court (Rule 35).

(2) That the Circuit Court of Appeals for the Second Circuit has rendered a decision in conflict with decisions of the Circuit Court of Appeals for the Ninth and the Fifth Circuits on the same question (Rule 35).

(3) The decision of the Circuit Court of Appeals holds in effect that every coasting vessel or fishing smack which passes the league limit subjects all aliens on board to all conditions of admission into the United States, including the Quota Law, and that American crews must be made up of citizens and citizens only, and is contrary to the intention of Congress as respects the mercantile marine.

(4) The present petition presents precisely the same facts and questions of law which led this Court to grant a writ of certiorari on a previous application by this same petitioner for a writ to review the decision of the Circuit Court of Appeals sustaining the dismissal on a writ of habeas corpus against Commissioner of Immigration Henry H. Curran. After the resignation of Mr. Curran and the succession of Hon. Benjamin M. Day as Commissioner of Immigration, this Court vacated the judgments of the District Court and Circuit Court of Appeals and remanded the cause to the District Court with direction to dismiss the cause as abated, pursuant to Section 11 of the Act of February 13, 1925, on the ground that the six months period had expired within which a motion might be made asking this Court to permit that cause to be continued against the successor

in office. No determination on the merits of this cause was ever made by this Court; nor has there since been rendered any decision by this Court determining the questions presented. Petitioner now, by proper proceeding against Commissioner of Immigration Benjamin M. Day, validly presents the same questions of law, which remain as yet undetermined by this Court.

WHEREFORE, petitioner respectfully prays that a writ of certiorari issue to the United States Circuit Court of Appeals for the Second Circuit, and submits his brief hereto attached in support of this petition.

Respectfully submitted,

SILAS B. AXTELL,
Attorney for Petitioner.

IN THE

Supreme Court of the United States.

UNITED STATES OF AMERICA, *ex rel.* NIELS PETER CLAUSSEN,

Petitioner,

—against—

HON. BENJAMIN M. DAY, Commissioner of Immigration,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

POINT I.

Petitioner, being unlawfully imprisoned and deprived of liberty by the present commissioner of immigration, presents by his writ of habeas corpus against the present commissioner and by his petition to this Court, a present valid claim for release, of which he may not be deprived because of abatement of an earlier pending writ against another.

When, on advice by the Solicitor General that the six months period, wherein a petition may be presented requesting that a successor in office be substituted for a resigned official, had expired, this Court remanded to the District Court the cause then pending in this Court on certiorari, with direction to dismiss the said cause as

abated, the Court did not thereby deprive petitioner of a privilege of a hearing before this Court on habeas corpus as to the legality of his restraint and imprisonment. It is submitted that in no event can a wrongful imprisonment be countenanced or overlooked on the theory that an estoppel of the prisoner's right to a hearing on habeas corpus results on failure to substitute for a resigned official a successor official as party-respondent. In addition, in the present case this Court properly vacated the judgments of the District Court and the Circuit Court of Appeals before directing that the cause then pending against Mr. Curran, who had resigned as Commissioner of Immigration, be dismissed as abated. This left open and unadjudicated the question of the lawfulness of petitioner's imprisonment.

And after the former cause against Mr. Curran was dismissed as abated, pursuant to the direction of this Court, the petitioner, who had been at liberty on bail since the writ against Mr. Curran was obtained, surrendered himself for the first time to the custody of Hon. Benjamin M. Day, the present Commissioner of Immigration, and thereupon, while in custody of Commissioner Day, obtained the present writ of habeas corpus.

In no sense then does the dismissal of the former writ because of abatement of the cause against Mr. Curran bar petitioner from a hearing in the present proceeding against Commissioner Day.

This Court granted a writ of habeas corpus on the former application because a question was presented which required adjudication by this Court. That question has not been settled to date; and a writ of certiorari should therefore be granted for its review.

POINT II.

Claussen's arrival at Boston was not an "entry * * * to the United States" from a foreign country within the immigration laws, but if considered in the light of an arrival, constituted only an arrival from the American port of New York from which he had shipped as merchant seaman on an American vessel for a round trip voyage; and more than five years had expired since his last arrival from a foreign country and entry here and before the crime,—barring deportation.

The District Court and Circuit Court of Appeals in this case have erred in assuming, or ruling, that a man who ships on an American merchant vessel for a voyage beyond the three-mile territorial limits of the United States and return on the same vessel, without discharge abroad, leaves and quits the country within the meaning of the Immigration and Deportation Laws; and that when a merchant seaman at the end of the voyage steps ashore from an American vessel on which he shipped out from an American port for a round-trip voyage, he thereby makes an arrival or "entry" into this country within the meaning of such laws. In the majority opinion of the Circuit Court of Appeals (R. 67), an analogy is drawn between such arrival here and the return of one who has crossed the international bridge at Niagara Falls to Canada and after viewing the Falls from the Canadian side, returns over the bridge. But the analogy is not apt. It may be conceded that when one crosses the border, whether a foot or a mile into Canada, he has left the country, and re-enters it when he returns; but when one merely ships out onto the high seas as a member of the crew on an American merchant vessel, on articles

which recognize an American port as his home port and which call for a continuous, uninterrupted voyage over the seas and back to an American port, with discharge only in an American port, the situation is different, both on the simple fact of the matter and also because of the special laws applicable to such ships and seamen. It needs merely to consider the distinction that, whereas if the man who strolls into Canada commits a crime one foot over the border he is in no instance responsive to American law or process, the merchant seaman throughout the voyage is not only responsive to American law and to American process for crimes committed, but is also dependent throughout on American law for his rights. If it be, as stated by Judge Mack in the majority opinion (R. 65), that the statement that an American vessel is to be deemed American soil is "but a fiction", it is nevertheless a fiction *of law*, created, fostered and applied by the law, and, so far as the seaman's rights, duties and liabilities are concerned, is legal fact. Cases such as the one described by Judge Mack, of which *U. S. ex rel. Kovalenski* v. *Flynn*, 17 Fed. (2nd) 524, is an example, are in every way distinct from the case at bar, and have no bearing on the one question presented in this case.

This case can be determined only in the light of the peculiar provisions of law relating to merchant seamen and their status under Immigration and Naturalization Laws, and the special statutes early enacted and maintained in encouraging the merchant marine. The following are cases in which were applied, and which illustrate, the principles governing the case at bar:

Kirk v. *U. S. ex rel. Lawrenson* (C. C. A., 5th Cir.), 24 Fed. (2nd) 64;

Weedin v. *Banzo Okada* (C. C. A., 9th Cir.), 2 Fed. (2nd) 321;
Nagle v. *Hansen* (C. C. A., 9th Cir.), 17 Fed. (2nd) 557;
Matter of Herzvik, 1 Fed. (2nd) 449;
Chinese Cabin Waiter, 13 Fed. 286;
Chinese Laborers on Shipboard, 13 Fed. 291;
Ex parte T. Nagata, 11 Fed. (2nd) 178 (D. C. S. D. Cal.).

By these cases it is well settled in most of the Federal Circuit and District Courts that one serving as a member of the crew of an American vessel on a round-trip voyage out of an American port to ports of foreign countries and back to an American port *does not depart from the United States in the contemplation of law*, but is at all times during the voyage within the United States and subject to the jurisdiction thereof.

The *Kirk* and *Okada* cases are directly in point on the one question in this case. And it should be noted that in the *Kirk* case the opinion of Judge Mack in the *Claussen* case is questioned. On facts as to "entry" and "arrival" almost identical, the Circuit Court of Appeals for the Fifth Circuit said in the *Kirk* case:

> "Appellee * * * was not subject to deportation for crime or for any other reason, unless it be that his return from a foreign voyage in 1926 was unlawful. It is contrary to all reason to suppose that every return of an alien seaman having rights as an American citizen, limited and qualified though such rights may be, from a foreign voyage to a port of the United States on an American vessel, should be within the ordinary rule that

> every entry constitutes a new entry. As pointed out by the Circuit Court of Appeals for the Ninth Circuit in *Weedin* v. *Banzo Okada*, 2 F. (2d) 321, to so hold would result in an irreconcilable conflict between R. S. §5363 (18 USCA §486), which punishes the master of any vessel who without cause intentionally leaves a seaman in a foreign port, and section 8 of the Immigration Act of 1917 (8 USCA §144), which punishes the bringing into the United States of an alien not duly admitted" (24 Fed. (2nd) 66).

The case of *Weedin* v. *Banzo Okada*, decided by the Circuit Court of Appeals of the Ninth Circuit in November, 1924, is directly in point on the circumstances of Claussen's arrival in March, 1918, and on the question of the effect of such arrival under the Immigration Laws. The only distinction between the *Banzo Okada* case and the case at bar is that Okada was sought to be deported under the provision requiring deportation of one of an excluded class, at any time within five years after illegal entry; while Claussen is sought to be deported under the provisions requiring deportation when a crime is *committed within five years after entry*.

In the case cited, Okada entered the United States unlawfully in 1917 and continued to reside here until June, 1921; thereupon he shipped as a member of the crew of an American vessel for a voyage from ports of the United States to Oriental ports and return. At the close of the voyage on August 26th, 1921, he returned to the United States with the vessel, as still a member of the crew thereof, and continued to reside here until apprehended on April 24th, 1924. Conceding that, if Okada's

landing in the United States upon arrival at the termination of the voyage from American ports to foreign ports and return should be construed an entry within the meaning of the Immigration Law, Okada must be deported, but that, if such arrival was not an entry, he must be discharged, the Circuit Court of Appeals held that such arrival at the end of the voyage was not an arrival from a foreign country, nor an entry within the Immigration Laws, and that, accordingly, Okada had not entered the United States within five years prior to the attempted deportation. The Court analyzed the statutes bearing upon the question and cited the *Chinese Cabin Waiter* and *Chinese Laborers on Shipboard* cases and said:

> "If the appellee had remained at all times on shipboard, it would scarcely be contended that he left the United States, and the fact that he was permitted to land at Honolulu for a few hours, by the captain, did not change his status" (2 Fed. [2nd] 322).

It cannot be held in the case at bar that Claussen made any entry in 1918 sufficient to toll the statute, without overruling the Kirk and Okada cases.

The case of the *Chinese Cabin Waiter* was under an Act of Congress prohibiting the master of a vessel from bringing into the United States any Chinese laborer from any foreign port or place. The Court construed the Act to mean the prohibiting of bringing any such laborer embarking at a foreign port or place for the United States, and not to apply to the arrival in port of such a laborer already on board the vessel, who had shipped out on the same when it left the American port, as a member

of its crew, and merely arrived back with the ship. The Court said:

> "And in this connection it should not be overlooked that the *petitioner, while on board the steamship as one of its crew, was within the jurisdiction of the United States, at all times under their protection, and amenable to their laws. An American vessel is deemed to be a part of the territory of the State within which its home port is situated, and as such a part of the territory of the United States*" (13 Fed. 289).

In *Chinese Laborers on Shipboard*, the last cited case was followed and the same rule held to control, although the petitioners had been permitted to land temporarily at a foreign port during the voyage, but without, however, any termination of their relation as members of the crew.

The case of *Matter of Herzvik* arose under Section 34 of the Immigration Law of February 5th, 1917, instead of Section 19 as in the *Okada* case and the case at bar, but is otherwise directly in point. Section 34 contains a special limitation of three years within which deportation proceedings may be had with respect to alien *seamen* who land unlawfully in the United States. In the *Herzvik* case the petitioners originally entered the country as seamen and thereafter resided in the United States or shipped on American vessels for a period of more than three years. Thereafter they shipped as members of the crew of an American vessel out of San Pedro, California, on a voyage to Chilean ports and return. They were apprehended at the return end of the voyage and ordered deported, and obtained a writ of habeas corpus. The

Court sustained the writ and ordered the petitioners released, saying:

> *"Petitioners do not come within the class known as immigrants,* defined in Section 3 of the Immigration Act of 1924 as being *aliens 'departing from any place outside the United States destined for the United States', for they did not depart from any foreign place, but departed from the United States for a continuous voyage which ended in a United States port"* (1 Fed. (2nd) 450).

In the case of *Ex parte T. Nagata*, the petitioner, a native of Japan, had for more than five years prior to October, 1924, been a resident of the United States. His employment was that of a fisherman. On October 4, 1924, he was employed by the owner of a motor fishing vessel called the "Washington", which had the status of an American vessel engaged in foreign commerce.

On October 4, 1924, the "Washington", with petitioner on board as one of the crew, visited nearby Mexican waters for the purpose of fishing. It returned to the port of Los Angeles on November 4, 1924. Petitioner was there detained by the immigration officers on the ground that he was not entitled to enter the United States. The particular charge made was that the alien entered on the 4th of November, 1924, by means of false and misleading statements. The Court sustained the writ and ordered the petitioner to be discharged and his bond exonerated, saying:

> "The question involved is as to *whether the going by the petitioner outside the territorial limits of the United States constituted a departure so as to give the character of an original entry to his*

arrival on the return trip. Petitioner did not leave the ship from the time it left the port of Los Angeles until it returned to the same port. *There was no intention on his part to land or remain in foreign territory permanently or temporarily. These facts bring the case directly within the case of Weedin* v. *Okada*, 2 Fed. (2nd) 321 (C. C. A. 9th), decided November 24, 1924, and *in re Herzvik and Kongsvik* (D. C.) 1 Fed. (2nd) 449, decided August 13, 1924. Respondent admits that, under the facts, the decisions cited being considered, petitioner is entitled to be discharged but argues that, in view of expressions of the Supreme Court of the United States in certain cases, an American ship is not to be considered as American ground while in foreign waters. To this point is cited *Scharrenberg* v. *Dollar S. S. Co., et al.*, 38 Sup. Ct. 28, 245 U. S. 122, 62 L. Ed. 189, and *U. S.* v. *N. Y. & Cuba Mail S. S. Co.*, 46 Sup. Ct. 114, 70 L. Ed. —, decided by the Supreme Court on December 14, 1925. I find nothing inconsistent with what was decided in the *Herzvik* and *Okada* cases in either of the decisions of the Supreme Court which respondent notes."

The foregoing decisions, directly in point, are in accord with the old cases which have established the status of the alien member of the crew of an American vessel

In re Ross, 140 U. S. 453;
Matthews v. *Offley*, Fed. Cas. No. 9290.

And in addition, as pointed out by the Circuit Court of Appeals, Ninth and Fifth Circuits, in *Weedin* v. *Banzo Okada*, and *Kirk* v. *U. S.*, above cited, any other ruling would result in making the provisions of R. S. Section 5363 (Comp. Stat. Section 10468) totally inconsistent

with the provisions of Section 8 of the Immigration Act (Comp. Stat. 1918, Com. Stat. Annotated Supplement 1919, Section 4289¼ d. d.). Section 5363 of the Revised Statutes provides that any master of an American vessel who, without just cause, forces a seaman on shore to leave him in a foreign port, or refuses to bring home again all the seamen whom he carried out, who are in condition and are willing to return, shall be punished by fine or imprisonment. At the same time, the other section cited, Section 8 of the Immigration Act, provides that any master of any vessel who shall bring into or land within the United States any alien not duly admitted or not lawfully entitled to enter or reside in the United States under the Immigration Laws shall be guilty of a misdemeanor and punished by fine and by imprisonment. As to the effect of these two statutes, the Circuit Court of Appeals in the *Okada* case well said:

> "If the contention of the Commissioner of Immigration is upheld, the master of an American vessel with alien seamen on board is placed between two fires. If he refuses to return them to the home port he is guilty of a misdemeanor, and if he does return them he may be guilty of a felony" (2 Fed. (2nd) 322).

The decisions above cited are likewise in accord with the policy of the enactments of Congress, as illustrated by Revised Statutes, Sections 4573 to 4579, regulating the protection of American seamen on foreign cruises; while the decision of the courts below in the case at bar is wholly out of accord with such statutes.

Thus, revised Statutes, Section 4573, requires that before clearance is granted to any vessel bound on a foreign voyage, the captain shall deliver to the Collector of Customers a sworn crew list.

Sections 4574-5 contain provisions respecting such list.

Section 4576 requires that the master of any such vessel, on return to an American port, shall exhibit the certified copy of the crew list with which he sailed out, and shall produce each person whose name appears thereon; and he and the owner shall be fined $400 for the failure to produce any such person, unless it is shown that such person has been properly discharged abroad with the consent of a consular official or has died or absconded or has been forcibly impressed into other service.

Section 4577 requires that the consular official shall povide for sustenance and passage to some American port for any seaman of the United States found destitute in such official's respective district. Under this section, *Matthews* v. *Offley*, Fed. Case No. 9290, above cited, was decided, it being held that *aliens* employed on American vessels are *seamen of the United States* within the meaning of this section.

Section 4578 requires all masters of American vessels to transport such seamen back to an American port when so instructed by a consular official; and Section 4579 provides for allowances for such transportation.

The protective provisions of the Federal statutes above referred to relate to and enure to the benefit of "American seamen" or "seamen of the United States" as a general class, without regard to whether they are American or alien citizens.

Matthews v. *Offley*, Fed. Cas. No. 9290, and other case above cited and discussed.

And the solicitations for the welfare of American seamen—including persons of alien citizenship but serving

as seamen upon American vessels—shown by the statutes above referred to, and particularly the provision requiring that they be cared for by American consuls, and, when stranded abroad, be returned to the United States, is utterly inconsistent with any theory that, when arriving back at the end of a voyage as a member of the crew of an American vessel, without having left the vessel abroad, such a seaman is to be considered an immigrant.

In addition to the foregoing, it is to be borne in mind that this relator had taken out "first papers" to become a citizen on June 6th, 1919. He took such papers out as a seaman under Section 4352 of the Compiled Statutes, covering the Act of June 29, 1906, Chap. 3592, Sec. 4, as amended by Act of June 25, 1910, Chap. 401, Sec. 2, and Act of May 9, 1918 (Chap. 69, Secs. 1-3). Under that section the seaman need not prove five years' residence as a condition to naturalization, but may, instead, prove three years' service as an American seaman after taking out first papers. Paragraph 8 of such section contains this provision:

> "Every seaman, being an alien, * * * shall, *for all purposes of protection as an American citizen, be deemed such after the filing of his declaration of intention to become such citizen.*"

Under this section, at all time since the relator applied for first papers on June 6th, 1919, he has been and is entitled to be "deemed" an American citizen "for all purpose of protection as an American citizen".

The immigration authorities have taken an anomalous position in this case, and an inconsistent position, which is clear from the following: From the record, it is clear that even after March 25th, 1918, the relator continued to sail on American vessels in the coastwise trade. From

the record, it is also clear that at all times subsequent to January 22nd, 1912, and until March 25th, 1918, the relator shipped continuously on American vessels on round-trip voyages out of American ports and back. Now, so far as an alien's status as an American seaman is concerned, there is no distinction between service by him on American ships making foreign cruises and those sailing in coastwise trade. Even in coastwise trade, the seaman goes out on the high seas. And in foreign trade, if he ships for a round trip, he is none the less in American territory by reason of being a member of the crew of an American vessel than when he is a member of such a crew in coastwise trade. Claussen was just as much out of the United States, therefore, on subsequent voyages on coastwise cruises as he was when he sailed out on the "Elisha Atkins" for a round-trip voyage.

The truth is, he has never been out of the United States, within the meaning of the Immigration Laws, since his arrival here on January 22nd, 1912. Nor has he since that date ever arrived here "from a place outside of the United States". It follows that the alleged crime of which he was convicted was not committed within five years of his entry into the country.

CONCLUSION.

It is respectfully submitted that the decision of the Circuit Court of Appeals fails to give proper effect to the Acts of Congress involved herein, and therefore your petitioner respectfully prays that a writ of certiorari issue to enable this Court to review the decision of the Circuit Court of Appeals.

Respectfully submitted,

SILAS B. AXTELL,
Attorney for Petitioner.

Office Supreme Court
FILED
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CHARLES ELMORE

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1928.

No. 416.

UNITED STATES OF AMERICA, *ex rel.* NIELS PETER CLAUSSEN,

Petitioner,

—against—

HONORABLE BENJAMIN M. DAY, COMMISSIONER OF IMMIGRATION,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

SUPPLEMENTAL AND REPLY BRIEF FOR PETITIONER.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1928.

No. 416.

THE UNITED STATES OF AMERICA, *ex rel.* NIELS PETER CLAUSSEN,

Petitioner,

—against—

HONORABLE BENJAMIN M. DAY, Commissioner of Immigration,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

SUPPLEMENTAL AND REPLY BRIEF FOR PETITIONER.

Statement.

The facts are fully stated in petitioner's brief filed in support of the petition for the writ of certiorari. This brief is filed merely to reply to some of respondent's argument, and to call attention to several recent decisions.

Argument.

When thoroughly digested, the argument advanced by respondent throughout his brief may be reduced finally to the single proposition that the words "entry of the alien to the United States" as used in §19 of the Act of February 5, 1917 (U. S. Code, Tit. 8, §155), here involved, have a peculiar meaning distinct from their meaning, or the meaning of similar words, in other statutes relating to immigration and the merchant marine. The fallacy of the proposition is particularly clear from pages 8, 16, 17, 18 and 23 of respondent's brief.

Respondent concedes the correctness of the decisions in the *Chinese Cabin Waiter*, 13 Fed. 286, and *Chinese Laborers on Shipboard*, 13 Fed. 291 (see Respondent's Brief, pp. 16-17), claiming merely that what was said about an American ship constituting American territory was unnecessary to the decision. If so much were conceded by petitioner, those decisions, if followed, yet require reversal of the judgment in this case. For if in those cases the Chinese aliens involved were not brought within the United States from any foreign port or place, despite the fact that the vessel on which they had shipped had gone into foreign waters and foreign ports, then Claussen on his arrival in Boston in 1918 on the ship on which he had shipped out of New York for a round-trip voyage, was not brought within the United States from any foreign port or place, and did not make an "entry * * * to the United States" from a foreign port or place. If the Chinese were not within what the Court held, and what respondent concedes, to have been the object of the Act of Congress there involved, "to pre-

vent the further immigration of Chinese laborers to the United States" (Respondent's Brief, p. 16), then the Chinese were not, by their arrival here at the end of the voyage, making an "entry • • • to the United States;" and neither was Claussen. If under the circumstances of the Chinese cases, the Chinese laborers involved were "already here" (Respondent's Brief, p. 16, and 13 Fed. 289), as of a time prior to the return end of the voyage, so that the landing was not an arrival or entry, or bringing within the United States under the Act there involved, then Claussen's landing in 1918 did not constitute an "entry", legal or illegal. The only "entry • • • to the United States" attributable to Claussen, whether legal or illegal, was his last landing in the United States from a foreign vessel or from a vessel upon which he had shipped from a foreign port or place. The statute does not say "legal entry" nor "illegal entry"; but it does say "entry • • • to the United States".

Suppose that Claussen had been arrested when he was landing from the "Elisha Atkins" in 1918. Would his have been a case for *exclusion* or for *deportation?* To hold that it would have been a case for exclusion would be directly contrary to the Chinese cases, and would result in conflict between statutes as pointed out in those and the other cases discussed in the briefs. But if not a case for exclusion, and if a case for deportation (as to theory, no concession being intended that he was deportable), then his landing was not the making of an "entry • • • to the United States".

Respondent's reference to coast-wise voyages of alien members of the crew as constituting "the movement of aliens from one place in the United States to another"

(Respondent's Brief, p. 23), does not answer the dilemma put by Judge Hand in the case at bar, but serves to emphasize that dilemma as well as to support petitioner's whole argument. Few coast-wise voyages are made in which the vessel does not go beyond the three-mile limit. If in a voyage from New York to Galveston, in the course of which the ship is 25 or 100 miles or more at sea, the crew arrives in Galveston merely from New York, instead of from foreign waters within the meaning of the immigration laws, then the same must hold true in the case of a continuous voyage from New York to Boston via Cuba and Para.

Several decisions of the United States District Courts made since petitioner's brief was filed should be noted.

In *U. S. ex rel. Pantoja* v. *McCandless* (D. C. E. D. Pa.), 29 Fed. (2nd) 586, decided December 11, 1928, Judge Dickinson said:

> "He [relator] came here October 3, 1919, for the first time, and his latest voyage landed him here on December 7, 1925. If, therefore, the pertinent date be that of his first landing, it makes no difference whether the disputed limit be five years or three, and if the pertinent date be that of his latest voyage, again it matters not whether the time be three years or five. The sole question, in consequence, is from which date we should reckon.
>
> It is urged on behalf of the relator that, since October 3, 1919, he has never been out of the United States. This, however, is true only in the sense that the deck and forecastle of an American vessel is soil of the United States. It is said that the thought is a legal fiction. So it is; but

the fictions of the law are the most stable and substantial facts known to it. To simplify the question, take the case of an alien sailor, who as a British subject sails from Liverpool to a port in this country. He is admitted as a sailor temporarily with a 60-day limit of stay. Within that time he ships on an American vessel, which touches at Japanese, Chinese, and finally a Mexican port; he remaining on board until he again lands at a port in this country. The concept that he has not been out of the country is clear enough, on the fiction of which we have spoken. If his second voyage is a second entry into this country, from what country does he come; and, if he is to be deported, what is the country 'whence he came'? On the other hand, just as embarrassing questions can be asked from the other side. The sailor spoken of had the right to stay in the country only 60 days. Could he then ship on an American vessel without subjecting himself to the penalty of deportation?

The only escape from many imagined dilemmas is to give, as is often done, a different meaning to the same word under different situations and uses. When speaking of sailors, above referred to, remaining in the United States for more than 60 days, 'in the United States' means remaining within its territorial limits. For many purposes, however, including an interpretation of the immigration law, an American vessel is American soil. When, therefore, one who is in the United States boards an American vessel, and remains on board of her until her return to her home port, he cannot be classified as an alien immigrant 'coming from' any other country, no matter at how many foreign ports the vessel may have touched, for he

has never (for immigration nor for many other purposes) been out of the Unjted States" (29 Fed. 2nd 587-588).

Annexed as an addenda to this brief are copies of four unreported opinions recently rendered by Judge Groner, in the District Court for the Eastern District of Virginia. The cases are *Matter of Puga* v. *Schmucker, Dir. of Immigration* and *Matter of Skoge* v. *Schmucker*, both decided January 7, 1929; *Matter of Jundumen* v. *Schmucker*, decided November 22, 1927; and *Matter of Pereiro* v. *Schmucker*, lecided September 21, 1927. These opinions of Judge Groner, which have only recently come to counsel's attention, strongly support petitioner's contention.

The judgments of the Circuit Court of Appeals and the District Court should be reversed and an order directed to be entered sustaining the writ of habeas corpus and releasing petitioner from custody.

Respectfully submitted,

SILAS B. AXTELL,
Attorney for Petitioner.

CHARLES A. ELLIS,
Of Counsel.

Addenda.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF VIRGINIA.

January 7, 1929.

In the Matter

of

FRANCISCO PUGA

v.

EDWIN B. SCHMUCKER, Dist. Director of Immigration, on a Petition for Habeas Corpus.

GROSER, *D. J.*:

This is a petition for a writ of habeas corpus. The undisputed facts are as follows:

Petitioner is a native of Spain, thirty-one years old, and has followed the sea for the last twenty years—came to the United States in May, 1920, as a member of the crew of the S. S. "Morro Castle", from Havana, Cuba—was paid off, discharged, inspected, and admitted by the immigration officials at New York. From that date to the time of his arrest at Newport News October 22, 1928, he has been serving on coastwise vessels of the United States, with the exception of two trips to Central America and return made on American vessels, the last in December, 1927. Petitioner stated on his examination in

court that he had come to the United States to reside, that he left his home in Spain in 1920 with the intention not to return, and that he has since resided at all times in the United States. He is able to read and write English.

The question in the case is whether, under the Act of May 26, 1924, he is subject to deportation. I have heretofore held in several cases that under the Act of February 5, 1917, an alien seaman, who had resided in the United States, with the intention of making the United States his home, for three years or more, if able to read and write, was entitled to remain in the United States notwithstanding the provisions of the Act of 1924, and I see no reason to change the conclusion announced in the cases referred to. I have also held in a number of cases that an alien seaman shipping on an American vessel for a round trip voyage to a foreign port with the intention of returning on the vessel to the United States, and who did in fact return in accordance with his contract of shipment, did not thereby lose his status as a resident of the United States.

My attention has been called to the *Claussen* case (16 F. (2d) 15), and to the *Rios* case (24 F. (2d) 654), both of which were decided by the Circuit Court of Appeals, Second Circuit. On the other hand, the Circuit Court of Appeals in the Ninth Circuit (Weedin, 2 F. (2) 321; Nagle, 17 F. (2) 557), and in the Fifth Circuit (Nicolich, 25 F. (2) 245; Persson, 25 F. (2) 247) have taken the opposite view. I have followed the latter in the cases referred to above, and with great deference to the opinions in the Second Circuit, I am disposed to adhere to the conclusion previously reached.

Under these circumstances, the writ will be granted and the petitioner discharged.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF VIRGINIA.

January 7, 1929.

In the Matter

of

SAMSON SKOGE

v.

EDWIN B. SCHMUCKER, Dist. Director of Immigration, on a Petition for Habeas Corpus.

GRONER, *D. J.*:

This is a petition for habeas corpus, and the undisputed facts are as follows:

Petitioner, a Norwegian, came to the United States in the fall of 1915 with the intention of making the United States his home, and has resided here ever since. He is a seaman and came in as a member of the crew of a foreign vessel, and has continued to reside in the United States ever since while ashore, working as a sailor or fireman on American vessels, both coastwise and foreign bound. In the latter case, his contract called in each instance for return voyages, and in no case did he ship with the intention of residing in any other country than the United States, or with any other intention than of returning with the ship to an American

port. In 1919 he made his declaration of intention to become an American citizen, but at the time his petition would have been heard, he was at sea, and did not respond to his notice, and his petition was dismissed for failure to prosecute the same. He joined the American Seamen's Union also in 1919, and for six or eight months was employed by the Government on a Government dredge in Philadelphia harbor, and at other times on tugboats in New York Harbor. He last shipped foreign on the American S. S. "Cubore" at Baltimore for a round-trip voyage to Chile, returning to Baltimore with the vessel, where thereafter for two or three months he was confined in the Marine Hospital. The order of deportation regard this last voyage as his entry into the United States.

For reasons which I have heretofore stated in the *Pereiro* and other cases decided September 21, 1927, and which I have briefly referred to in the *Puga* case decided today, I find myself in disagreement with the immigration officials in this respect. I do not think that an alien seaman, legally in the United States, loses his status as such by shipping on an American vessel on a round-trip voyage where his intention is and his contract provides for a return to the United States with the vessel.

The petition will be granted and petitioner discharged.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF VIRGINIA.

November 22, 1927.

In the Matter

of

THOMAS JUNDUMEN

v.

EDWIN B. SCHMUCKER, Dist. Director of Immigration, on a Petition for Habeas Corpus.

GRONER, *D. J.*:

The evidence shows that petitioner first came to the United States in 1920 on the Nova Scotia schooner "Cambria", and was paid off at Mobile, Alabama, April 23, 1920, whence he went to the west coast of the United States and worked with an American corporation in Alaska from 1920 until September, 1924, and thereafter worked on coastwise vessels on the Pacific Coast until April, 1925. In April, 1925, he signed on the American S. S. "Atlanta City" at San Francisco for a trip to Europe and back to the United States and was paid off and discharged at Philadelphia July 2, 1925, on the return of the ship and has resided in the United States ever since.

I originally had to pass upon a somewhat similar

case as this (*In the Matter of Jose Perciro*), and I shall consider the memorandum filed by me in that case, so far as applicable, as though it were filed in this case, and in the event of an appeal, it may be used by either side as expressing my views.

I think this man's case is controlled by Section 34 of the Immigration Act of 1917; that is to say, after a period of three years from his original entry, he is not the subject of deportation. He came as a seaman and his entry was lawful though his remaining after the reshipping period was not. Nevertheless after three years his status became fixed and he was entitled to remain and his round-trip voyage on an American ship did not affect this status. In the view I take of the matter, he has never been out of the United States since 1920 in the sense in which departure from the United States was intended by the immigration act. He has been in the jail at Newport News for more than two months awaiting deportation.

An order granting the petitioner's discharge will be entered on presentation.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF VIRGINIA.

September 21, 1927.

In the Matter

of

JOSE PEREIRO

v.

EDWIN B. SCHMUCKER, Dist. Director of Immigration.

GRONER, *D. J.*:

This is a petition for a writ of habeas corpus directed to the District Director of Immigration and others, the purpose of which is to have the petitioner discharged from custody. The District Director of Immigration has filed an answer and the matter has been heard upon the record as made up at the hearing had by the local immigration officials on a warrant of arrest issued against the petitioner and served upon him August 20th last. The record before the local inspector having been forwarded to the Department, a warrant of deportation was issued by the Secretary on the ground that petitioner, not having been admitted under the quota provisions of the law and not having shipped foreign within the allowed time, is now unlawfully in the United

States. At the hearing the petitioner was examined on his own behalf. He testified that he was 39 years old and was born in Spain—that he left Spain September 28, 1906, and came to the United States via Liverpool, arriving in New York in October, 1906, on an English ship as a second class passenger—that he was taken to Ellis Island, examined and then brought over to the Battery on a ferry boat and discharged—that he has lived in the United States ever since—that his occupation is that of marine fireman—that he duly registered for military service during the War—that he paid income taxes for four or five years and during the period of the War he worked on Panama Railroad colliers and an army tugboat, and since the War has worked largely in coastwise shipping. In 1924, he shipped out of Newport News, as fireman on the steamship "Manchurian Prince", on a voyage from the United States to Great Britain and return and on arrival at New York on the return of the vessel, he was paid off and discharged, and furnished with the usual identification card given to alien seamen. It was on the ground that he had left the United States and that his return was a re-entry, i. e., in 1924, that the order of deportation was entered, such re-entry, it is contended, subjecting him to the terms and conditions of the Act of May 26, 1924.

Of course, if petitioner was lawfully admitted to the United States in 1906, the Act of 1924 would not apply, and so the examining officer certified that in his opinion the warrant of arrest should be cancelled and petitioner discharged unless it appeared that his statements as to the time of arrival in the United States and admission here were untrue.

The answer shows that some investigation was made in New York with a view to determining the truth of these statements, and it is either stated in the answer or was stated in open court that an examination of the files of the Bureau in New York did not show petitioner's name as having entered the United States at or about the time mentioned by him. I think it obvious that if the ground of deportation is the untruthfulness of the statements of the petitioner as to the time of his arrival in this country, he should have had an opportunity of examining the record or some proof of their examination by competent authority should have been had at the hearing. I do not know and I cannot assume that the records back a period of 21 years, when the immigration laws were very much less rigidly enforced than at present and very much less drastic in their terms, were necessarily so kept as to exclude a possibility of mistake and without evidence of this kind I think it is equally obvious that petitioner has not had the hearing contemplated by the statute before deportation and there has been no additional or supplemental evidence before me on the subject so that the record as made shows petitioner as having been legally admitted to the United States in 1906. There can be no doubt of the fact that he has resided in the United States since 1907 for the fact is verified by evidence of other witnesses than himself. There is no doubt that he was here long prior to 1917 for in that year he registered for military service. He has not offended any of the laws of the United States and so far as the record shows is a person of good moral character.

It would seem to me under these circumstances that he has met the requirements of proof of legal admission into the United States.

But even if this is not correct, I still think the warrant of deportation unlawful for admittedly he had been in the United States more than five years prior to 1917 and had not during that period been out of the United States and if that is correct—and it is conceded—under the terms of the Act of February 5, 1917, notwithstanding he had not been legally admitted into the United States, he was entitled to remain after having resided here five years or more, or three years or more if able to read and write. It is true this right to remain was subject to his continuing in the United States. If he left the United States for a foreign country, the rights established by his previous residence would be lost and this is what the United States says occurred when he shipped foreign in the "Manchurian Prince". I am constrained to believe this is not the intent or purpose of the statute. He never left the United States with the intention of going into a foreign country. He was a seaman and he shipped on a vessel bound for a foreign port but under a contract to return with the vessel to the United States. He had no intention of leaving the United States. He had no intention of going into a foreign state. His status would have been just as much changed if he had shipped on a coastwise vessel which in the course of her voyage went outside the territorial waters of the United States. These questions have been considered by the courts in a number of instances. See on this subject: *Weedin* v. *Okada*, 2 Fed. (2nd) 178; *U. S.* v. *Claussen*, 16 Fed. (2nd) 15. (In the last named case see the dissenting opinion of Judge Hand.)

The writ will be awarded and the petitioner discharged from custody.

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In the Supreme Court of the United States

OCTOBER TERM, 1928

No. 416

UNITED STATES OF AMERICA EX REL. NIELS PETER Claussen, petitioner

v.

HON. BENJAMIN M. DAY, COMMISSIONER OF IMMIGRATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

OPINION BELOW

The Circuit Court of Appeals affirmed the judgment of the District Court without opinion. (R. 96.)

JURISDICTION OF THIS COURT

The judgment sought to be reviewed was entered on June 12, 1928. (R. 96.) Petition for certiorari was filed in this Court on September 6, 1928.

The jurisdiction of this Court to issue the writ prayed for is conferred by the Act of February 13, 1925.

QUESTION PRESENTED

The question presented is whether the return of an alien seaman to the United States at the conclusion of a trip to South American and Cuban ports aboard an American vessel may be treated as an "entry" into the United States within the meaning of the Immigration Laws.

STATEMENT

This is the second appearance of this case before this Court on petition for writ of certiorari.

The first petition was granted by this Court on March 7, 1927, under No. 848; 273 U. S. 688. On January 9, 1928, this Court remanded the cause to the District Court "with a direction to dismiss the cause as abated," it having been made to appear that the respondent had resigned his office as Commissioner of Immigration, and no proper steps had been taken by petitioner to substitute the new incumbent. Thereafter petitioner instituted new habeas corpus proceedings. The writ issued, but after a hearing was ordered dismissed. (R. 2 and 78.) On appeal that action was affirmed. (R. 96.)

ARGUMENT

Inasmuch as this Court granted the first petition for certiorari in this case, and the present petition, as the result of new habeas corpus proceedings,

raises the same question, the respondent knows of no grounds for opposing the present petition beyond those set forth in its brief filed in the original case, *supra*.

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SEPTEMBER, 1928.

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In the Supreme Court of the United States

OCTOBER TERM, 1928

No. 416

THE UNITED STATES OF AMERICA EX REL. NIELS PETER CLAUSSEN, petitioner

v.

HONORABLE BENJAMIN M. DAY, COMMISSIONER OF IMMIGRATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

OPINION BELOW

The Circuit Court of Appeals affirmed the judgment of the trial court without opinion. (R. 94.) The record contains, however, the opinions of the District Court and the Circuit Court of Appeals rendered in the first habeas corpus proceeding which presented the precise question raised in the present case. The opinion of the District Court in the first case appears at page 34 of the record, but it has not been reported. The opinion of the Circuit

Court of Appeals in the first case appears at page 40 et seq. of the record, and is reported in 16 F. (2d) 15. Writ of certiorari was granted in that case March 7, 1927, 273 U. S. 688–689, but on "suggestion of abatement" submitted by respondent, this Court on January 9, 1928, reversed the judgments below and remanded the cause to the District Court with directions to "dismiss the cause as abated." (276 U. S. 590.)

JURISDICTION OF THIS COURT

The judgment now to be reviewed was entered on June 12, 1928. (R. 57.) Petition for certiorari was filed in this Court on September 6, 1928, and granted on October 22, 1928, pursuant to the provisions of the Act of February 13, 1925. (R. 59.)

THE QUESTION

Section 19 of the Immigration Act of 1917 provides for deportation of aliens who commit crimes involving moral turpitude within five years after "entry" into the United States and who are sentenced therefor to imprisonment for terms of one year or more. Petitioner, an alien seaman, shipped on an American vessel for a voyage to foreign ports and return. The only contention seriously urged by petitioner is that his return to this country did not constitute an "entry" because, having sailed on an American vessel, he never left the United States, his theory being that an American ship is American

territory. The only question really presented is, therefore, the applicability of this theory.

THE STATUTES

Section 19 of the Immigration Act of 1917, c. 29, 39 Stat. 874, 889 (U. S. C., Title 8, Sec. 155), so far as pertinent provides:

> * * * any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, * * * shall, upon the warrant of the Secretary of Labor, be taken into custody and deported * * *.

The terms "alien," "United States," and "seaman" are defined in Section 1 of the Act (U. S. C., Title 8, Sec. 173) as follows:

> That the word "alien" wherever used in this Act shall include any person not a native-born or naturalized citizen of the United States; * * *. That the term "United States" as used in the title as well as in the various sections of this Act shall be construed to mean the United States, and any waters, territory, or other place subject to the jurisdiction thereof, except the Isthmian Canal Zone; * * *. That the term "seaman" as used in this Act shall include every person signed on the ship's article and employed in any capacity on board

> any vessel arriving in the United States from any foreign port or place. * * *

Other provisions of the Immigration Act of 1917 relating to seamen are set forth in the Appendix hereto.

STATEMENT

Petitioner, a seaman and Danish subject came to this country in 1912 as a member of the crew of a British ship. The next day he shipped in an American schooner and his subsequent voyages have been under the American flag. His last foreign voyage began in October, 1917, when he signed as one of the crew of the American schooner *Elisha Atkins* for a voyage to South America and back to the United States by way of Cuba. (R. 3, 4.) This voyage ended on March 25, 1918, at Boston, Massachusetts. Since then he has been employed in the American coastwise trade. (R. 22.) In the petition for a writ of habeas corpus it was alleged that in 1918 he became a delegate of the Seamen's Union in the Port of New York, and remained in that capacity until 1920, when he became agent for the Seamen's Union in Portland, Maine. (R. 5.) Meanwhile, and on June 6, 1919, he took out his first naturalization papers, but he has never received his final papers. (R. 23.) In May, 1921, there was a strike by seamen in connection with which a man was killed. The petitioner and six others were indicted for causing his death, and on June 17, 1921, the petitioner pleaded guilty of man-

slaughter and was sentenced by the Cumberland County Court at Portland, Maine, to serve a minimum term of four and one-half years. (R. 5, 17, 23.) While serving that sentence he was accorded a hearing by the immigration authorities upon the charge that he was unlawfully in the United States in that he had been sentenced subsequent to the passage of the Immigration Act of 1917 to imprisonment for a term of one year or more because of the conviction in this country of a crime involving moral turpitude committed within five years after entry. (R. 21, 26.) As a result of this hearing petitioner was on November 19, 1921, ordered deported upon the expiration of his sentence. (R. 26.) Habeas corpus proceedings were then instituted in his behalf in the District Court of the United States for the Southern District of New York, the contention being made that an American ship is American territory and that as petitioner made his South American trip on an American vessel, he never departed from the United States and therefore never "entered" the United States when he returned upon that vessel in 1918. The District Court, however, refused to discharge the petitioner (R. 48), and its decision was affirmed by the Circuit Court of Appeals for the Second Circuit. (R. 57.)

SUMMARY OF ARGUMENT

The sole question presented is whether petitioner when he landed at Boston on March 25, 1918, after a voyage to South American and Cuban ports, then

entered the United States within the meaning of the statute, or whether he had been within the United States while on the voyage. The doctrine that for some purposes an American ship is American territory has no application to the present case. To give it such application is to do violence to both the purpose and the letter of the Act, and finds no support in the decisions of the courts.

ARGUMENT

THE THEORY THAT AN AMERICAN SHIP IS AMERICAN TERRITORY DOES NOT APPLY IN THIS CASE. PETITIONER DEPARTED FROM THE UNITED STATES ON HIS VOYAGE TO SOUTH AMERICA, AND HIS RETURN CONSTITUTED AN ENTRY WITHIN THE MEANING OF SECTION 19 OF THE IMMIGRATION ACT OF 1917

The question in the case is not whether petitioner's entry was lawful or unlawful; neither should it be confused with another question formerly debated but now settled, namely, whether it is the *first entry alone* which starts the running of the period within which the alien may be deported. It is now settled that the prohibitions against admission of aliens as well as the provisions for their deportation apply to "aliens whose history, condition or characteristics brought them within the descriptive clauses, irrespective of any qualification arising out of a previous residence or domicile in this country." *Lapina* v. *Williams*, 232 U. S. 78, 91. See also *Lewis* v. *Frick*, 233 U. S. 291; *Cosmano* v. *Davis*, 273 U. S. 738; *United States* v. *Flynn*, 17 F. (2d) 524, and cases there cited.

In the petition for certiorari (p. 7) it is stated that—

> It will be seen, therefore that the only question presented on this appeal is whether, when Claussen shipped out of New York on the American schooner *Elisha Atkins* on October 19, 1917, for a round trip continuous voyage, as a member of the crew, to South American and Cuban ports *and return*, he departed from the United States, within the meaning of the immigration laws, with such effect that his arrival back in the United States, as a member of such crew, and landing at Boston, at the end of such voyage, on March 25th, 1918, constitutes a new entry into the United States within the meaning of the immigration laws, such as will toll the five year period within which the crime, of which he was convicted, must have been committed in order to warrant deportation.

The sole question, therefore, is whether Claussen entered the United States on March 25, 1918, after he returned from South America and Cuba, or whether, within the meaning of the statute, he had been in the United States all the time. Such an attempt to apply the doctrine that an American ship is American territory finds no support in the statute or in the applicable decisions of the courts. The Act is entitled, "An Act to regulate the immigration of aliens to, and the residence of aliens in, the United States." The term "United States," as used in the title, as well as in the various sections, is to be construed to mean "the United States, and any

waters, territory, or other place subject to the jurisdiction thereof, except the Isthmian Canal Zone," and by the same section it is provided that if any alien shall leave the Canal Zone or any insular possession of the United States and attempt to enter any other place under the jurisdiction of the United States, nothing contained in the Act shall be construed as permitting him to enter under any other conditions than those applicable to all aliens. The term "seaman" is defined to include every person signed on the ship's articles and employed in any capacity on board any vessel "arriving in the United States from any foreign port or place." The purpose of the Act is not to regulate navigation or terms of employment of seamen or their treatment while on board ship. Its purpose is to regulate immigration to, and residence of aliens in, the United States. To say that an alien seaman who leaves this country on a ship bound for South America, and five months later returns to an American port, has not left the United States, and when he is discharged and lands at Boston does not enter the United States, is to do violence to the plain language of the statute, whether his voyage is on an American ship or any other ship, and whether he returns by the same ship on which he sailed or by some other ship. What was said by this Court in *Cunard Steamship Company* v. *Mellon*, 262 U. S. 100, 122, of the definition of the term United States used in the Eighteenth Amendment, is applicable here. "The immediate context and the purport of

the entire section show that the term is used in a physical and not a metaphorical sense,—that it refers to areas or districts having fixity of location and recognized boundaries." In that case the question involved was whether the Amendment covered domestic merchant ships outside the waters of the United States, and this Court held that it did not.

In *Scharrenberg* v. *Dollar S. S. Co.*, 245 U. S. 122, this Court had under consideration Sections 4 and 5 of the Act of February 20, 1907, c. 1134, 34 Stat. 898, 900, as amended by the Act of March 26, 1910, c. 128, 36 Stat. 263, commonly known as the Alien Contract Labor Law. It was claimed that by employing and bringing an alien seaman to San Francisco for the purpose of shipping him, followed by his actually being shipped as a seaman on board a vessel of American registry, the defendants violated the provisions of the Act prohibiting the importation of contract laborers "into the United States." In overruling this contention this Court said, at page 127:

> Equally unallowable is the contention that a ship of American registry engaged in foreign commerce is a part of the territory of the United States in such a sense that men employed on it can be said to be laboring "in the United States" or "performing labor in this country." It is, of course, true that for the purposes of jurisdiction a ship, even on the high seas, is often said to be a part of the territory of the nation whose flag it flies. But in the physical sense this

> expression is obviously figurative (International Law Digest, Moore, vol. I, § 174), and to expand the doctrine to the extent of treating seamen employed on such a ship as working in the country of its registry is quite impossible. Thus the seamen employed on the *Mackinaw* were not within either the spirit or the letter of the law on which the petitioner bases his action and in any point of view his contention is fanciful and unsound and must be denied.

See also *In re Lam Mow*, 19 F. (2d) 951; *Castner, Curran & Bullitt, Inc.*, v. *Hamilton*, 275 Fed. 203, 205. In the *Lam Mow case* it was held that a Chinese born upon an American vessel on the high seas, whose parents were alien Chinese, was not born in the United States within the meaning of the Fourteenth Amendment.

In the light of these decisions and of the definition of the term United States, contained in Section 1 of the statute, and taking into consideration the obvious purpose of the Act, the conclusion seems inescapable that petitioner while on his foreign voyage was outside the United States and that upon his return he entered the United States. Looked at in a practical way, what happened upon his arrival at Boston from South America on March 25, 1918, had all the characteristics of an entry, no matter how narrow a meaning is given to that word. Apparently for the first time he concluded to remain permanently in this country. He became a delegate of the Seamen's Union, and on June 6,

1919, took out his first naturalization papers. It was an entry in the real sense, not like his first arrival in 1912, when, on the next day after his arrival, he shipped as a member of the crew of another vessel. In *United States* v. *International Mercantile Marine* (District Court, Southern District of New York), 219 Fed. 328, it was held that two seamen coming to the port of New York with no intention of remaining, but intending to stay only long enough to find an available ship to carry them back to foreign shores did not "enter" the United States within the meaning of the head tax provisions of the Immigration Act of 1907. The court said (p. 330):

> The question always is whether the sailor has entered the country in any real sense, or has merely used it as a point from which to embark on the next available ship.

Upon principle, the fact that Ciaussen sailed on the foreign voyage in an American ship rather than a foreign ship would seem to make no difference. There is nothing in the immigration laws to indicate that the nationality of a vessel bringing an alien to our shores plays any part in the determination of the question whether he enters the United States within the meaning of those laws. A man who commits a felony within five years after he enters the United States is no less a menace to our peace and welfare because he came in an American ship instead of a foreign ship. The statute is designed to permit this country to rid itself of such

alien criminals, and the nationality of the ship from which they land does not enter into it at all.

Moreover, if petitioner's arrival and landing in the United States in 1912 from Buenos Aires was an entry into the United States within the meaning of the Immigration laws here involved, and in his petition for habeas corpus, he repeatedly makes that direct concession (R. pp. 3, 5, 6), then each subsequent return and landing was an entry, for no matter how many times an alien seaman, such as petitioner, returns and lands pursuant to his calling, the Immigration law (Sec. 33, Act of 1917), treats all such landings as of exactly the same status. In other words, the subsequent landings of an alien seaman like petitioner confer upon him the same and not different rights. Section 33 of the Act of 1917, *supra*, governs the right of an alien seaman to be paid off and discharged in a port of the United States as was done in petitioner's case. R. 14.)

It provides that such an alien seaman so paid off and discharged may be allowed to land only for the purpose of reshipping "on board any other vessel bound to any foreign port or place." That restriction applies alike to all landings of an alien seaman as such. Thus there is in the law absolutely no basis for petitioner's claim that his arrival in 1912 was an entry for deportation purposes, but not his subsequent arrivals from foreign voyages. The fact is that until his arrival from a foreign voyage

in 1918 petitioner always shipped foreign (R. 3), thus complying with the requirements of the statute. When, however, upon his last return from such service he was discharged, and instead of reshipping foreign as the statute required, and without being examined for general admission, he confined himself to residence on land and service in the coastwise trade, he then became amenable not only to the provisions of Section 34, but other provisions of the Act of 1917, *supra*, dealing with aliens unlawfully in the United States.

Under Section 34, petitioner's last arrival in 1918 is treated as an entry, and he is declared to be "unlawfully in the United States." His arrest by the Secretary within three years thereafter is authorized for the specific purpose of definitely determining whether as an alien he was qualified "for admission to the United States." If so, he was to be admitted, and if not qualified, was to be *deported*. He was not, however, dealt with under Section 34, doubtless because his case did not come to the attention of the immigration authorities prior to the expiration of the three-year period. (R. 27–28.) He thus acquired immunity from possible deportation growing out of such illegal landing, but that is all that he received. Section 34 makes it plain that his unlawful landing transformed him from the status of seaman into the status of an ordinary alien, and as it was his landing in 1918 that caused Section 34 to declare him to be "unlawfully in the

United States," not the entry of 1912 as petitioner contends, there appears no escape from utilizing the 1918 entry in dealing with petitioner as an alien based upon subsequent prohibited conduct, as in the case at bar.

As above pointed out there is no logical basis for adopting the 1912 landing as an entry, nor any landing prior to 1918, for none of them was for the purpose, as was the 1918 landing, of residing here or serving in the coastwise trade. Unless, therefore, the 1918 entry be treated as the entry for dealing with petitioner as an alien, there exists no ground for utilizing any prior landing for that purpose, and he thus becomes endowed with a liberty of conduct enjoyed by no other type of alien. Such a result should not be lightly arrived at. The statute does not compel such an interpretation.

Petitioner relies upon the following cases: *Chinese Cabin Waiter*, 13 Fed. 286; *Chinese Laborers on Shipboard*, 13 Fed. 291; *Petition of Hersvik*, 1 F. (2d) 449; *Weedin* v. *Banzo Okada*, 2 F. (2d) 321; *Ex parte Nagata*, 11 F. (2d) 178; *Kirk* v. *Lawrenson*, 24 F. (2d) 64, and *Nagle* v. *Hansen*, 17 F. (2d) 557. The two earlier decisions were the basis of the decisions in the later cases.

The case of *Chinese Cabin Waiter*, 13 Fed. 286, decided by the Circuit Court for California August 27, 1882, and the case of *Chinese Laborers on Shipboard*, 13 Fed. 291, decided by the same court on August 29, 1882, arose under the Act of May 6,

1882, c. 126, 22 Stat. 58, prohibiting the coming of Chinese laborers to the United States for a period of ten years. The second section made the master of any vessel knowingly bringing within the United States any Chinese laborer "from any foreign port or place" guilty of a misdemeanor. The third section declared that these provisions should not apply to Chinese laborers who were in the United States on the 17th of November, 1880, or who should come before the expiration of ninety days from the passage of the Act. The petitioner, a Chinese subject, came to California six years before the passage of the Act and had since resided in that state. He was employed as a seaman on a ship which sailed from San Francisco in May, 1882, bound on a voyage to Australia, and returned to San Francisco on the 8th of August, 1882; and he alleged that since his return the captain had refused to allow him to land. The captain of the ship alleged that he retained the petitioner by reason of the prohibitory and punitive provisions of the Act. The court said (p. 288):

> The question presented is whether the petitioner is within the class of laborers whose landing in the United States is prohibited by the Act of Congress.

The court pointed out that the captain was desirous of obeying the law but was embarrassed because he was bound by his contract to return the petitioner to the port of shipment and therefore

"asks the direction of the court as to his duty." The court said (p. 288):

> We do not, however, find any difficulty in arriving at the meaning of the Act.

The court then pointed out that the master of the vessel was prohibited by the statute from bringing within the United States any Chinese laborer "from any foreign port or place; and that means, from bringing any Chinese laborer embarking at a foreign port or place," and that it was "laborers thus taken on board that the master is prohibited from bringing into the United States." After pointing out that any other construction would compel a master of an American vessel leaving a port of the United States with a Chinese seaman to set him adrift at a foreign port at which the vessel might touch and prohibit the master from bringing him back in accordance with the bond which he was required by law to execute (citing Revised Statutes, Sec. 4576), the Court continued (p. 289):

> The object of the act of Congress was to prevent the further immigration of Chinese laborers to the United States, not to expel those already here.

There can be no question of the soundness of that interpretation of the statute, and it was not necessary to go further. Nevertheless, the court went on to say:

> And in this connection it should not be overlooked that the petitioner, while on

> board the steamship as one of its crew, was within the jurisdiction of the United States, at all times under their protection, and amenable to their laws. An American vessel is deemed to be a part of the territory of the state within which its home port is situated, and as such a part of the territory of the United States. The rights of its crew are measured by the laws of its state or nation, and their contracts are enforced by its tribunals.

The case of the *Chinese Laborers on Shipboard*, decided by the same court two days later, was, as the court said (13 Fed. 292), "substantially like that of *Ah Sing*, the Chinese cabin waiter of the same vessel, recently before us on habeas corpus," the only difference being that in the case then under consideration the petitioners had, on several occasions, by permission of the captain, gone on shore and remained a few hours. The court held that the status of the petitioners and their relation to the vessel were not changed by the fact that they were permitted to land for a few hours at the port of Sydney.

These two cases were beyond question properly decided, though in our judgment what was said about an American ship being American territory was not necessary for their decision. The only question necessary to decide was the meaning of the language of the statute prohibiting the landing of Chinese laborers "from any foreign port or place,"

and the object of the statute was to prevent further Chinese immigration, not to deport Chinese lawfully in the country at the time the Act took effect. No question of the meaning of the word entry, as used in the statute now under consideration, was presented or decided. The present statute, unlike the Chinese Exclusion Act, provides for deportation of those already here, not for exclusion of those arriving afterwards. Furthermore, when read carefully, it is apparent that the court did not mean to say that a seaman on board an American vessel must be deemed within the United States. He was (p. 289) "within the jurisdiction of the United States, and at all times under their protection, and amenable to their laws," and it would be a "singular circumstance" if an Act of Congress had been so framed that a subject of China by his temporary employment on an American vessel "was deprived of the right of residence acquired under the treaty with his country."

The next case, *Petition of Hersvik*, 1 F. (2d) 449 (District Court, Southern District of California), involved the question whether the petitioner, who had been a resident of this country for more than three years, relinquished the right to remain in this country because of a voyage on an American vessel to South America and return. Petitioner was an alien and a seaman by occupation. He shipped on an American vessel for a voyage to Chile and return. Upon his return he was detained by immigration officers as being an alien not

entitled to be admitted to the United States. The court pointed out that petitioner was not within the class of immigrants defined by the Immigration Act of 1294 as being aliens "departing from any place outside the United States destined for the United States." This case seems to have no particular bearing upon the present case.

The case of *Weedin* v. *Banzo Okada*, 2 F. (2d) 321 (Circuit Court of Appeals, Ninth Circuit), arose under the provision of Section 19 of this same Act, which provides for the deportation within five years after entry of any alien who at the time of entry was a member of one or more of the classes excluded by law. Okada entered the United States unlawfully in 1917, and continued to reside here until June, 1921. In the latter month he shipped as a member of the crew of an American vessel on a voyage to Oriental ports and return, and came back on the vessel in 1921. In April, 1924, a warrant for his deportation was issued. The court said:

> On the foregoing facts the court below discharged the appellee from custody, and the Commissioner of Immigration has appealed. The five-year period commences to run from the date of the prohibited entry, and the bar of the statute was here complete, unless the entry at the close of the voyage in question was prohibited by law.

The court held that the "entry" at the close of the voyage in question was not prohibited by law.

That was all that was necessary to the decision of that case, but the court went on to quote from the case of *Chinese Cabin Waiter*, 13 Fed. 286. The distinction between that case and the case at bar is apparent. There the court was concerned with the question whether the relator's entry was lawful. In the present case the question is, was there an entry?

Ex parte Nagata, 11 F. (2d) 178 (District Court for the Southern District of California), was decided on the authority of the *Okada case*, and like that case involved primarily the question whether the subsequent entry was legal or illegal.

Nagle v. *Hansen*, 17 F. (2d) 557 (Circuit Court of Appeals, Ninth Circuit), merely involved the question whether Hansen had so far lost his status of seaman as to empower the Secretary of Labor to deport him for unlawful entry at any time within the general five-year period of limitations, or whether deportation must be made within the three-year period applicable solely to seamen. The opinion rather assumes that Hansen's landing after a round trip voyage was an entry. The case does not help petitioner, but on the contrary seems to be against him.

In *Kirk* v. *United States ex rel. Lawrenson* (Circuit Court of Appeals, Fifth Circuit), 24 F. (2d) 64, it was sought to deport Lawrenson, a good faith seaman, because he did not possess when arrested "an unexpired immigration visa, and had never been admitted to the United States as an immigrant for residence purposes." He had, how-

ever, declared his intention to become a citizen, and had served on board American vessels for three years, thus giving him certain limited rights of citizenship. In holding that he was not subject to deportation, the Circuit Court of Appeals said (p. 66):

> Appellee was not of an undesirable class, was qualified for admission under the Immigration Act of 1917, and was not subject to deportation for crime or for any other reason, unless it be that his return from a foreign voyage in 1926 was unlawful. It is contrary to all reason to suppose that every return of an alien seaman having rights as an American citizen, limited and qualified though such rights may be, from a foreign voyage to a port of the United States on an American vessel, should be within the ordinary rule that every entry constitutes a new entry. * * *

The court thus commented on the ruling in the case at bar (p. 66):

> The opposite view finds some support in *United States* v. *Curran*, 16 F. (2d) 15, decided by the Circuit Court of Appeals for the Second Circuit; but that decision apparently recognizes that the case of *Weedin* v. *Banzo Okada, supra*, was correctly decided, and does not proceed on the theory that an alien seaman by making a foreign voyage on an American vessel loses any rights given him by statute, although it does hold that conviction of a crime involving moral turpitude overrides all such rights. * * *

In the case at bar petitioner had declared his intention to become a citizen, but had not followed it up with three years service on American ships, so that he did not have the status which Lawrenson, *supra*, had. Moreover, it seems reasonably clear that in the *Lawrenson case* the citizenship status was regarded as rather controlling.

In his dissenting opinion Judge Hand in petitioner's first habeas corpus proceeding (R. 42), says that it seems to him "that there is a strong reason to distinguish the return of a seaman at the end of a voyage for which he has signed the articles and on the same ship on which he left, from a reentry one has not bound oneself to make when one went away." However, in *Cosmano* v. *Davis*, 273 U. S. 738, the alien who went abroad was under bond to appear in a criminal case and was bound to return, yet his return was considered an entry and certiorari was denied by this Court December 13, 1926. If the question was whether the return was an illegal entry, there might be some force in the contention, but that is not the question. So also the fear of the dissenting Judge that the decision below will have the effect of subjecting to the immigration laws, including the quota provisions, alien seamen employed on vessels engaged in the coastwise trade which happen, in the course of their voyages, to pass the three-mile limit, is groundless. The distinction between the coastwise trade and immigration is obvious, and has always been recognized in

our laws. The statute which we are considering was passed to regulate the immigration of aliens to, and their residence in, the United States, and does not purport to regulate the movement of aliens from one place in the United States to another. Sections 34 and 35 of the same Act contain provisions especially relating to alien seamen arriving in the United States from "any foreign port or place," and for alien seamen landing in a port of the United States contrary to the provisions of the Act, but nowhere do we find evidence of an intent by Congress to regulate ordinary coastwise traffic through an immigration statute.

Judge Hand's fear of the consequences which may follow the decision below seems to us to be unsubstantial. The statute must be given a sensible construction to effect the purpose intended by Congress.

The judgment of the Circuit Court of Appeals should be affirmed.

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MARCH, 1929.

APPENDIX

Immigration Act of February 5, 1917, c. 29, 39 Stat. 874:

> SEC. 32. That no alien excluded from admission into the United States by any law, convention, or treaty of the United States regulating the immigration of aliens, and employed on board any vessel arriving in the United States from any foreign port or place, shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to regulations prescribed by the Secretary of Labor providing for the ultimate removal or deportation of such alien from the United States, and the negligent failure of the owner, agent, consignee, or master of such vessel to detain on board any such alien after notice in writing by the immigration officer in charge at the port of arrival, and to deport such alien, if required by such immigration officer or by the Secretary of Labor, shall render such owner, agent, consignee, or master liable to a penalty not exceeding $1,000, for which sum the said vessel shall be liable, and may be seized and proceeded against by way of libel in any district court of the United States having jurisdiction of the offense.
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> SEC. 33. That it shall be unlawful and be deemed a violation of the preceding section to pay off or discharge any alien employed

on board any vessel arriving in the United States from any foreign port or place, unless duly admitted pursuant to the laws and treaties of the United States regulating the immigration of aliens: *Provided*, That in case any such alien intends to reship on board any other vessel bound to any foreign port or place, he shall be allowed to land for the purpose of so reshipping, under such regulations as the Secretary of Labor may prescribe to prevent aliens not admissible under any law, convention, or treaty from remaining permanently in the United States, and may be paid off, discharged, and permitted to remove his effects, anything in such laws or treaties or in this Act to the contrary notwithstanding, provided due notice of such proposed action be given by the master or the seaman himself to the principal immigration officer in charge at the port of arrival. (U. S. C. Title 8, Sec. 168.)

SEC. 34. That any alien seaman who shall land in a port of the United States contrary to the provisions of this Act shall be deemed to be unlawfully in the United States, and shall, at any time within three years thereafter, upon the warrant of the Secretary of Labor, be taken into custody and brought before a board of special inquiry for examination as to his qualifications for admission to the United States, and if not admitted said alien seaman shall be deported at the expense of the appropriation for this Act as provided in section twenty of this Act. (U. S. C. Title 8, Sec. 166.)

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SUPREME COURT OF THE UNITED STATES.

No. 416.—October Term, 1928.

United States *ex rel.* Niels Peter Claussen, Petitioner, *vs.* Benjamin M. Day, Commissioner of Immigration.	Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[May 13, 1929.]

Mr. Justice Butler delivered the opinion of the Court.

Petitioner is an alien held upon a warrant issued by the Assistant Secretary of Labor for deportation under § 19 of the Immigration Act of 1917, U. S. C., Tit. 8, § 155. On his petition, the district court for the southern district of New York issued a writ of habeas corpus. Respondent made return and after a hearing the writ was dismissed. The Circuit Court of Appeals affirmed.

Section 19 contains the following: "At any time within five years after entry . . . any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, . . . shall, upon warrant of the Secretary of Labor, be taken into custody and deported."

The facts are not in controversy. Petitioner is a native and subject of Denmark. He came to this country as a member of the crew of a British ship and landed at Norfolk January 22, 1912. He shipped the next day on an American schooner and subsequently served as a seaman on other American ships. October 19, 1917, he shipped from New York on the *Elisha Atkins* for a voyage to South America and return by way of Cuba; he landed at Boston, March 26, 1918. That was his last voyage from foreign ports to the United States. He was subsequently employed in American coastwise trade and resided for a time on land as representative of a seamen's labor union. In June, 1919, he petitioned for naturalization

and declared his intention to become a citizen of the United States. June 17, 1921, in the Cumberland county court in the State of Maine, he pleaded guilty to a charge of manslaughter, the killing of James Walker at Portland on May 21, 1921, and was sentenced to imprisonment for more than one year. Subsequently a warrant of the Department of Labor was served upon him and after a hearing he was ordered to be deported to Denmark upon the termination of his imprisonment.

The question for decision is whether petitioner was sentenced within five years after his entry into the United States.

The provision extends to all aliens, that is, every person not a native-born or naturalized citizen. § 1, U. S. C., Tit. 8, § 173. It is immaterial whether he was entitled to admission or whether he lawfully entered. The cause for which his deportation was ordered arose after entry. *Lapina* v. *Williams*, 232 U. S. 78, 91. *Lewis* v. *Frick*, 233 U. S. 291. His declared purpose to naturalize does not serve him here as he had not become a citizen. If his landing at Boston in 1918 was an entry he is rightly held.

Section 1 provides that "United States" as used in the Act shall be construed to mean the United States and any waters, territory or other place subject to the jurisdiction thereof except the Isthmian Canal Zone. An entry into the United States is not effected by embarking on an American vessel in a foreign port. Such a vessel outside the United States whether on the high seas or in foreign waters is not a place included within the United States as defined by the Act. *See Cunard S. S. Co.* v. *Mellon*, 262 U. S. 101, 122. *Scharrenberg* v. *Dollar S. S. Co.*, 245 U. S. 122, 127. The word "entry" by its own force implies a coming from outside. The context shows that in order that there be an entry within the meaning of the Act there must be an arrival from some foreign port or place. There is no such entry where one goes to sea on board an American vessel from a port of the United States and returns to the same or another port of this country without having been in any foreign port or place. *See* §§ 19, 32, 33, 35.

And it is clear that petitioner departed from the United States on the *Elisha Atkins* and that, when he landed at Boston on his return from South American and Cuban ports, he made an entry into the United States within the meaning of the Act.

Judgment affirmed.